Frankly, because we need a vital center of thought and action, and—again with all due respect—committees just are not suited to that purpose. A committee is the sum of its members, nothing more. It has no life of its own. What is needed is an executive and a staff with a broad responsibility for studying the problems of metropolitan areas and for thinking creatively about the role of the Federal Government in the solutions. If no member of the committee has such responsibility, then the committee will not have it. A committee can, in Mr. Merriam's illustration, make sure that the highway builders have been introduced to the urban renewal administrators, but it can do little more.

The cities of America need a voice at the summit equal in status to the voice of agriculture. A Department headed by a Secretary is suited to that purpose. A committee, consisting of 20 busy men taking time out periodically for a meeting or a quick luncheon together, is hardly a suitable substitute.

An alternative suggestion, advanced by Louis Brownlow among others, has more merit. That is to create an agency in the Executive Office of the President with staff of its own and with a planning and coordinating responsibility. Yet it is my experience that the most productive planning is that which is closely associated with the vitality of action programs. An agency which daily administers planning grants, urban renewal and slum clearance, public housing, and community facility loans can best nourish the creative thinking that is the missing ingredient.

Let us promote the Housing and Home Finance Agency to Cabinet level and rename it a Department of Housing and Metropolitan Affairs, with a broad charter to concern itself with the problems of metropolitan living and to conduct research, develop ideas, and initiate legislation and program recommendations. If there were still need for Mr. Merriam's committee or for a coordinating unit in the Executive Office of the President, I would see no objection. But I suspect that once the Secretary of Housing and Metropolitan Affairs were seated at the Cabinet table, the demand for additional coordinating mechanisms would quickly disappear.

The great weakness of democracy, and the ever-present threat to its survival, is political lag. A dictatorship can quickly remold its institutions, save only the institution of dictatorship itself; a democracy cannot. A democracy inevitably lumbers along, therefore, with outmoded and creaky machinery. Unfortunately, short of a crisis it rarely modernizes its machinery. But those who see the need cannot do other than keep trying.

Our traditional concept of federalism—outmoded in the last century by the nationalization of our economy and in this century by the urbanization of our society—is a case of political lag which urgently deserves our attention. I hope that university communities such as this one, located here in the Nation's Capital, will assume leadership in rethinking and reshaping our concepts of federalism to accord with the realities of modern life.

SENATE

TUESDAY, APRIL 5, 1960

The Senate met at 10 o'clock a.m., and was called to order by the President pro tempore.

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

O God, our Father, as in the pavilion of prayer at the day's beginning we fling open the shuttered windows of our darkened lives to the flooding light of Thy love, enable us, in the tasks committed to our hands, to reflect some broken rays of Thy glory. Teach us by the adventure of faith how to be victors over life, and not victims of the forces we encounter; and that to live victoriously, we must have a faith fit to live by, a self fit to live with, and a cause fit to live for. Grant us such a vision of our world, with its appalling need, as to make us sharers with Thee in saving it from the worst that is in man, to the best that is in Thy plan for all mankind when Thy kingdom comes.

We ask it in the dear Redeemer's name. Amen.

THE JOURNAL

On request of Mr. JOHNSON of Texas, and by unanimous consent, the reading of the Journal of the proceedings of Monday, April 4, 1960, was dispensed with.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, announced that the House had passed the bill (S. 1185) to provide for the preservation of historical and archeological data (including relics and specimens) which might otherwise be lost as the result of the construction of a dam, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the bill (S. 1062) to amend the Federal Deposit Insurance Act to provide safeguards against mergers and consolidations of banks which might lessen competition unduly or tend unduly to create a monopoly in the field of banking, with amendments, in which it requested the concurrence of the Senate.

The message further announced that the House had passed the following bills and joint resolutions, in which it requested the concurrence of the Senate:

H.R. 5726. An act for the relief of Hood County, Tex.;

H.R. 10550. An act to extend the Export Control Act of 1949 for 2 additional years;

H.R. 10978. An act to provide for the settlement of claims against the United States by members of the uniformed services and civilian officers and employees of the United States for damage to, or loss of, personal property incident to their service, and for other purposes;

H.J. Res. 208. Joint resolution providing for participation by the United States in the West Virginia Centennial Celebration to be held in 1963 at various locations in the State of West Virginia, and for other purposes;

H.J. Res. 397. Joint resolution to enable the United States to participate in the resettlement of certain refugees; and

H.J. Res. 602. Joint resolution authorizing the President to proclaim the week in May of 1960 in which falls the third Friday of that month as National Transportation Week.

HOUSE BILLS AND JOINT RESOLUTIONS REFERRED

The following bills and joint resolutions were severally read twice by their titles and referred as indicated:

H.R. 5726. An act for the relief of Hood County, Tex.; to the Committee on the Judiciary.

H.R. 10978. An act to provide for the settlement of claims against the United States by members of the uniformed services and civilian officers and employees of the United States for damage to, or loss of, personal property incident to their service, and for other purposes; to the Committee on Banking and Currency.

H.J. Res. 208. Joint resolution providing for participation by the United States in the West Virginia Centennial Celebration to be held in 1963 at various locations in the State of West Virginia, and for other purposes; to the Committee on Banking and Currency.

H.J. Res. 397. Joint resolution to enable the United States to participate in the resettlement of certain refugees; and

H.J. Res. 602. Joint resolution authorizing the President to proclaim the week in May of 1960 in which falls the third Friday of that month as National Transportation Week; to the Committee on the Judiciary.

H.R. 10550. An act to extend the Export Control Act of 1949 for 2 additional years; to the Committee on Banking and Currency.

LIMITATION OF DEBATE DURING MORNING HOUR

Mr. JOHNSON of Texas. Mr. President, under the rule, there will be the usual morning hour; and I ask unanimous consent that statements in connection therewith be limited to 3 minutes.

The PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

On request of Mr. JOHNSON of Texas, and by unanimous consent, the Aviation Subcommittee of the Committee on Interstate and Foreign Commerce and the Production and Stabilization Subcommittee of the Committee on Banking and Currency were authorized to meet during the session of the Senate today.

On request of Mr. JOHNSON of Texas, and by unanimous consent, the Committee on Foreign Relations and the Veterans Affairs Subcommittee of the Committee on Labor and Public Welfare were authorized to meet during the session of the Senate today.

On request of Mr. MANSFIELD, and by unanimous consent, the Subcommittee on the Problems of the Aged and Aging of the Committee on Labor and Public Welfare was authorized to meet during the session of the Senate tomorrow.

EXECUTIVE SESSION

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of executive business, to consider the new report on the Executive Calendar.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

The PRESIDENT pro tempore. If there be no reports of committees, the new report on the Executive Calendar will be stated.

U.S. TARIFF COMMISSION

The Chief Clerk read the nomination of Glenn W. Sutton, of Georgia, to be a member of the U.S. Tariff Commission, for a term expiring June 16, 1966.

The PRESIDENT pro tempore. Without objection, the nomination is confirmed.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination.

The PRESIDENT pro tempore. Without objection, the President will be notified forthwith.

LEGISLATIVE SESSION

Mr. JOHNSON of Texas. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to; and the Senate resumed the consideration of legislative business.

Mr. JOHNSON of Texas. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

NOTICE OF JOINT MEETING OF THE TWO HOUSES TOMORROW TO HEAR ADDRESS BY PRESIDENT ALBERTO LLERAS CAMARGO OF COLOMBIA

Mr. JOHNSON of Texas. Mr. President, I should like to announce, for the information of the Senate, that on Wednesday next, that is, tomorrow, at 12:30 p.m., the Senate will join the Members of the House of Representatives in a joint meeting to hear an address by President Alberto Lleras Camargo, of Colombia. I want all Members to be on notice that we expect to go as a body to the House Chamber in order to hear an address by this Latin American leader.

The PRESIDENT pro tempore. Morning business is in order.

MEDICAL CARE FOR THE AGED—RESOLUTIONS

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD a series of resolutions adopted by organizations in the State of New York protesting against the enactment of House bill 4700, the Forand bill, relating to medical care for the aged.

There being no objection, the resolutions were ordered to be printed in the RECORD, as follows:

RESOLUTION OPPOSING FORAND BILL (H.R. 4700) OR ANY SIMILAR TYPE BILL

Whereas there is now before the U.S. Congress a bill known as H.R. 4700 (Forand bill) which would provide certain medical care services to the social security beneficiaries; and

Whereas the problems concerning the aging population are not limited to medical care alone but involve housing, environment, and other socioeconomic factors; and

Whereas the existence of problems concerning any segment of the population does not inevitably require intervention by the Federal Government to provide a solution, particularly when voluntary health insurance plans are meeting the needs of the people; and

Whereas with Government paternalism must also come Government supervision and direction; and

Whereas because of the outstanding work that has been done by capable and patriotic organizations in New York State, there is no one in the State who has sought medical care who has not received it regardless of economic circumstances; and

Whereas it has been amply demonstrated in New York State that the problems concerning the aging can be met at the county, city, and State levels without Government interference and domination: Now, therefore, be it hereby

Resolved, That the Nassau-Suffolk Pharmaceutical Society goes on record as strongly opposing the enactment of the Forand bill, or any bill of a similar type; and be it hereby further

Resolved, That this opposition be made known to the Congressmen of the First, Second, and Third Congressional Districts, the two U.S. Senators from New York, and Hon. WILBUR MILLS, chairman, House Ways and Means Committee, House Office Building, Washington, D.C.

RESOLUTION OF THE NASSAU SURGICAL SOCIETY TO PRESERVE OUR AMERICAN FREE ENTERPRISE SYSTEM OF MEDICAL CARE

(Unanimously adopted at a regular membership meeting of the society held at Garden City, N.Y., on March 22, 1960.)

Whereas there is now in existence a plan known as H.R. 4700 (Forand bill) to put the Federal Government into the business of controlling and dominating medical care for the senior population of this country; and

Whereas the evidence presented to date concerning problems of the aging is neither complete nor conclusive, and may contain misinterpretations and misrepresentations; and

Whereas it has not been fully proved that the voluntary health insurance plans which are growing at a remarkable rate have not and cannot meet the needs of the aging population; and

Whereas the bill would set up a system whereby a Federal agency would establish arbitrary standards for medical care and dictate fees and charges; and

Whereas the law would destroy the doctor-patient relationship: Now, therefore, be it hereby

Resolved, That the Nassau Surgical Society is vigorously and unalterably opposed to H.R. 4700; and be it hereby further

Resolved, That the Nassau Surgical Society's opposition to this bill, or any other bill of similar type, be brought to the attention of our New York State Congressmen, our two U.S. Senators, as well as the chairman of the House Ways and Means Committee.

STUART T. ROSS, M.D.,
President.

RESOLUTION OF ROME CHAMBER OF COMMERCE OPPOSING THE FORAND BILL (H.R. 4700)

The Rome Chamber of Commerce, although recognizing a need for our senior citizens in the field of medical care, does not believe that the Forand bill is realistic nor sound for the following reasons:

1. It assumes all senior citizens are in need of aid. Benefits would be provided regardless of social need.

2. Cost of administering the program has no relationship to actual taxes paid, therefore threatens the financial stability of the social security program.

3. Since it does not provide cash benefits, as the present Social Security System does, the claimant has no freedom of choice as to doctor, hospital, or nursing home.

Therefore, the Rome Chamber of Commerce recommends further action on this bill await a complete study of the needs of our senior citizens scheduled in 1961 at the White House Conference on the Aging, as authorized by legislation in 1959.

RESOLUTION OF WOMAN'S AUXILIARY TO THE MEDICAL SOCIETY, COUNTY OF QUEENS

Whereas efforts to place the practice of medicine under governmental control are increasing each year; and

Whereas amendments to the social security law are the favorite instruments for those who favor governmental medicine; and

Whereas the Forand bill (H.R. 4700) is the 1960 version of the continuing efforts of the proponents of governmental medicine; and

Whereas the bill would set up a system whereby a Federal agency would set arbitrary standards for medical care and dictate fees and charges; and

Whereas the doctor-patient relationship would be seriously impaired, if not destroyed; and

Whereas it would put the Federal Government into an area of health care with which it is not equipped to cope; and

Whereas it would be most difficult, if not impossible, to provide the best medical care under a Government dominated program, which the passage of the Forand bill, or any bill of a similar type would bring about: Now, therefore, be it hereby

Resolved, That the members of the Woman's Auxiliary to the Medical Society, County of Queens, marshal all their resources for the purpose of preventing the enactment of the Forand bill, or any bill of a similar type; and be it further

Resolved, That a copy of this resolution be sent to Senator JACOB K. JAVITS, Senator KENNETH B. KEATING, and Hon. WILBUR MILLS, chairman, Ways and Means Committee, House of Representatives.

RESOLUTION OF HIGHLAND HOSPITAL OF ROCHESTER, N.Y.

Whereas the voluntary health insurance program in this country has shown remarkable progress in recent years; and

Whereas there now is before Congress a proposal known as H.R. 4700 (Forand bill) to provide certain health care services for social security beneficiaries under Government control and domination; and

Whereas the enactment of the Forand bill into law would mean further increases in social security taxes which are constantly rising each year; and

Whereas it would put the Federal Government into an area of health care with which it is not equipped to cope; and

Whereas the problems concerning the aging are not limited solely to medical care but involve many other segments to our economic and social life: Now, therefore, be it hereby

Resolved, That the Highland Hospital Staff Auxiliary calls attention of Congressmen OSTERTAG and WEIS, Senators JAVITS and KEATING and Hon. WILBUR MILLS, chairman, House Ways and Means Committee, House Office Building, Washington, D.C., to the fact that it is vigorously opposed to the Forand bill, or any other proposed law of the Forand type; and be it hereby further

Resolved, That copies of this resolution be forwarded to these legislators with the urgent request that they take action against the Forand bill.

IMPORTATION OF WOMEN'S FINE LEATHER DRESS GLOVES—RESOLUTION

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD a resolution adopted by the board of supervisors of Fulton County, N.Y., relating to the importation of women's fine leather dress gloves.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION 60

Whereas the National Association of Leather Glove Manufacturers, Inc., made an application to the U.S. Tariff Commission for relief under the escape clause of section 7 of the Trade Agreements Act of 1951, requesting that a quota be set on the import of women's fine leather dress gloves; and

Whereas the U.S. Tariff Commission made a decision that relief under such escape clause was not warranted and denied such application; and

Whereas the glove manufacturing industry accounts for 70 percent of all manufacturing *employment in* Fulton County; and

Whereas 95 percent of all of the domestic production of women's fine leather dress gloves is manufactured in Fulton County; and

Whereas Fulton County is rated by the U.S. Bureau of Employment in groups E and F (that is, "jobseekers considerably in excess of job opportunities" and "jobseekers substantially in excess of job opportunities"); and

Whereas as of January 14, 1960, there were in Fulton County 3,660 people unemployed out of a labor force of some 20,000 people; and

Whereas the average gross weekly earnings of gloveworkers is $48.91 per week as against an average of $81.08 per week for industrial workers in the State of New York; and

Whereas the cost of home relief has increased from $76,469.99 in 1957 to $104,998.75 in 1958; and

Whereas the cost of aid to dependent children has increased from $147,755.40 in 1957 to $205,148.95 in 1958; and

Whereas self-help activity in Fulton County has been vigorous and that in the last 5 years 4 new industries have settled in Fulton County, such efforts are canceled out by 10 of our own glove factories being forced out of business in the same period; and

Whereas in 1946 there were 152 glove factories in Fulton County, as against 76 in 1956, and as against 65 at the present time; and

Whereas in 1950 there were produced in Fulton County 259,000 dozen dress gloves as against 137,000 dozen in 1958; and

Whereas from 1950 to 1959 the ratio of imports to domestic production of table and pattern cut gloves has jumped from 29 percent to 150 percent; and

Whereas Fulton County has for many years been regarded as a distress area; and

Whereas the people of Fulton County have felt the effects of such distress not only to their financial well-being but their confidence in the future of Fulton County as a place for themselves to live and bring up their families is seriously affected: Now, therefore, be it

Resolved, That the Board of Supervisors for the County of Fulton, N.Y., hereby go on record as protesting the decision of the U.S. Tariff Commission to the effect that the import of women's fine leather dress gloves are not being imported in such a quantity as to warrant the relief requested by the National Association of Leather Glove Manufacturers, Inc., and let it be further

Resolved, That a copy of this resolution be forwarded to the U.S. Tariff Commission; Senators Jacob Javits and Kenneth Keating; Representative Stratton; and to Gov. Nelson Rockefeller; and to any and all other persons who may be in a position to exert any influence in this regard; and let it be further

Resolved, That the Fulton County Board of Supervisors go on record asking the aforesaid Senators, Congressmen, and Governor to initiate and sponsor any and all legislation necessary to protect the leather glove industry of Fulton County and the people therein.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BYRD of Virginia, from the Committee on Finance, without amendment:

H.R. 8649. An act to continue for a temporary period the existing suspensions of the tax on the first domestic processing of coconut oil, palm oil, palm-kernel oil, and fatty acids, salts, combinations, or mixtures thereof (Rept. No. 1233); and

H.R. 9820. An act to extend the period during which certain tanning extracts, and extracts of hemlock or eucalyptus suitable for use for tanning, may be imported free of duty (Rept. No. 1234).

By Mr. BYRD of Virginia, from the Committee on Finance, with amendments:

H.R. 9307. An act to continue for 2 years the suspension of duty on certain alumina and bauxite (Rept. No. 1235).

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, with amendments:

S.J. Res. 162. Joint resolution authorizing the Secretary of the Interior during the calendar years 1960 and 1961 to continue to deliver water to lands in certain irrigation districts in the State of Washington (Rept. No. 1236).

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. BIBLE (for himself and Mr. CANNON):

S. 3331. A bill to provide for the allocation of portions of the costs of Davis Dam and Reservoir to servicing the Mexican Water Treaty, and for other purposes; to the Committee on Interior and Insular Affairs.

S. 3332. A bill to permit certain service performed by employees of the Walker Irrigation District, of Yerington, Nev., to constitute "employment" for purposes of the insurance system established by title II of the Social Security Act; to the Committee on Finance.

(See the remarks of Mr. BIBLE when he introduced the above bills, which appear under separate headings.)

By Mr. ELLENDER (by request):

S. 3333. A bill to amend the act authorizing the Secretary of Agriculture to collect and publish statistics of the grade and staple length of cotton, as amended, by defining certain offenses in connection with the sampling of cotton for classification and providing a penalty provision, and for other purposes; to the Committee on Agriculture and Forestry.

By Mr. BEALL:

S. 3334. A bill to authorize the Secretary of the Navy to lease certain facilities of the United States to the Board of Management of the Temporary Home for Soldiers and Sailors; to the Committee on Armed Services.

By Mr. HICKENLOOPER (for himself, Mr. LAUSCHE, and Mr. DIRKSEN):

S. 3335. A bill to amend the Soil Bank Act, as amended, and the Agricultural Act of 1956, as amended; and

S. 3336. A bill to help restore the balance between the production of and the market demand for wheat, and for other purposes; to the Committee on Agriculture and Forestry.

(See the remarks of Mr. HICKENLOOPER when he introduced the above bills, which appear under a separate heading.)

RESOLUTION

SELECT COMMITTEE ON FEDERAL SUBSIDIES

Mr. LAUSCHE submitted a resolution (S. Res. 300) establishing a select committee to be known as the Select Committee on Federal Subsidies, which was referred to the Committee on Interstate and Foreign Commerce.

(See the above resolution printed in full when submitted by Mr. LAUSCHE, which appears under a separate heading.)

ALLOCATION OF PORTIONS OF COSTS OF DAVIS DAM AND RESERVOIR TO SERVICING THE MEXICAN WATER TREATY

Mr. BIBLE. Mr. President, on behalf of myself and my colleague, the junior Senator from Nevada [Mr. CANNON], I introduce, for appropriate reference, a bill providing for the allocation of portions of the costs of Davis Dam and Reservoir to servicing the Mexican Water Treaty.

The Davis Dam project was authorized in April 1941 under the provisions of the Reclamation Project Act of 1939. The principal purposes of the project are to furnish supplemental power for the Southwest, to afford reregulation of the Colorado River flows in coordination with the fluctuating releases from the Hoover Dam powerplant, and to service the terms of the U.S.-Mexican Water Treaty of 1944, which provides for a metered delivery of certain waters beyond the boundaries of the United States. The project also contributes to flood control, navigation improvement, irrigation and municipal water supplies, reduction in silt pollution, recreation, wildlife protection and related conservation purposes.

On August 14, 1957, the Senate Interior and Insular Committee filed its report No. 868, accompanying S. 33, an identical measure. Therein it was stated:

> It is the view of the committee that Congress, when it agreed to the Mexican Water Treaty of 1944, recognized that a reasonable share of the construction costs of Davis Dam should be charged to servicing the international agreement. Obviously, it was not contemplated that these costs should be borne by the power users within the United States who will, through rates fixed under reclamation law, repay the remaining construction costs in 50 years, with interest.

As sponsors, we thoroughly agree that the power consumers are, therefore, entitled to the relief provided by this proposal.

The PRESIDING OFFICER (Mr. LONG of Hawaii in the chair). The bill will be received and appropriately referred.

The bill (S. 3331) to provide for the allocation of portions of the costs of Davis Dam and Reservoir to servicing the Mexican Water Treaty, and for other purposes, introduced by Mr. BIBLE (for himself and Mr. CANNON), was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

TO PERMIT CERTAIN SERVICE BY EMPLOYEES OF WALKER RIVER IRRIGATION DISTRICT, NEVADA, TO CONSTITUTE "EMPLOYMENT" FOR PURPOSES OF TITLE II OF SOCIAL SECURITY ACT

Mr. BIBLE. Mr. President, on behalf of myself and my colleague, the junior Senator from Nevada [Mr. CANNON], I introduce for appropriate reference, a bill to permit certain service performed by employees of the Walker River Irrigation District, of Yerington, Nev., to constitute "employment" for purposes of the insurance system established by title II of the Social Security Act.

The purpose of the proposal is to validate the wage credits of employees of this organization for the period for which contributions have been paid. From 1951 to 1960 the Internal Revenue Service accepted contributions on these employees on the premise that they were eligible for coverage under the act.

In 1959, as a result of the determination by the legal division of the Board, it was held that the coverage was not proper and the employer was requested to file applications for refund for the last 3 years of the covered period, and that coverage be canceled. The employer has concluded coverage, but requests that contributions heretofore paid be retained and credits allowed the employers. Since the initiation of the program employees have died, others have retired or have gone to other employment. Should the wage credits be canceled, elderly persons who are now or have been eligible to draw benefits will be cut off without the retirement they had anticipated would be available for their old age.

I am assured that the payments were made in good faith on the part of both the employer and employees. The only way that this matter can be equitably settled is by the passage of this proposed legislation.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 3332) to permit certain service performed by employees of the Walker Irrigation District, of Yerington, Nev., to constitute "employment" for purposes of the insurance system established by title II of the Social Security Act, introduced by Mr. BIBLE (for himself and Mr. CANNON), was received, read twice by its title, and referred to the Committee on Finance.

A BALANCED WHEAT, FEED GRAIN, AND CONSERVATION PROGRAM

Mr. HICKENLOOPER. Mr. President, on behalf of myself, the Senator from Ohio [Mr. LAUSCHE], and the Senator from Illinois [Mr. DIRKSEN], I introduce, for appropriate reference, two bills, with reference to agriculture. One is the so-called wheat bill, and the other is the acreage reduction bill.

In brief, the acreage reduction bill proposes to eventually put into the conservation reserve a total of some 60 million acres, which will reduce the area of production in this country. The wheat bill proposes to adjust the wheat program in relation to other grains. The bills also have other purposes.

Mr. President, I ask unanimous consent to have printed in the RECORD, the statement which I am releasing in connection with these two bills, as a part of my remarks at this time, rather than take the time of the Senate to discuss the matter.

The PRESIDING OFFICER. The bills will be received and appropriately referred; and, without objection, the release will be printed in the RECORD.

The bills, introduced by Mr. HICKENLOOPER (for himself, Mr. LAUSCHE, and Mr. DIRKSEN), were received, read twice by their titles, and referred to the Committee on Agriculture and Forestry, as follows:

S. 3335. A bill to amend the Soil Bank Act, as amended, and the Agricultural Act of 1956, as amended; and

S. 3336. A bill to help restore the balance between the production of and the market demand for wheat, and for other purposes.

The release presented by Mr. HICKENLOOPER is as follows:

Senator BOURKE B. HICKENLOOPER, Republican, of Iowa, today introduced two bills designed to provide a balanced wheat, feed grain, and conservation program for the Nation's farmers.

The Iowa Senator, a member of the Committee on Agriculture and Forestry, said the objectives of his bills are to encourage market expansion for grains; to reduce production incentives for wheat; and to avoid shifting the burden of adjustment to producers of corn, other feed grains, and livestock, dairy, and poultry products.

Considerable adjustment in the wheat price support program is long overdue. Any and all change is painful to some of the people directly affected, Senator HICKENLOOPER said. In this connection, he emphasized the importance of the conservation reserve provisions of his bills, which he said will cushion the shock of these necessary adjustments.

The first of the Hickenlooper bills provides authority for the Department of Agriculture to continue to enter into contracts with farmers to retire cropland under the conservation reserve program.

Three annual increases of $65 million in conservation reserve funds are authorized by the bill. These funds would make possible the retirement of 5 million additional acres of cropland each year. Added to the 28 million acres now in the conservation reserve, the annual increases authorized in his bill provide for a total of 43 million acres being placed in the reserve by the end of 1963.

Although the launching of a new program inevitably is accompanied by difficulties, the conservation reserve gives evidence of being a very worthwhile program, Senator HICKENLOOPER said. Experience to date indicates that adjustment in farm production through the conservation reserve costs about half as much as it does under the old acreage allotment, price support, and storage program, he added.

Senator HICKENLOOPER's second bill provides for a further enlargement of the conservation reserve as a part of a new wheat program.

This bill provides for the elimination of wheat acreage allotments and marketing quotas beginning with the 1961 crop. Coupled with the removal of these restrictions on the operation of individual farms would be the establishment of wheat price supports based on the support level for corn, with adjustments for differences in weight, nutritive value, and buyer preference.

For the 1961 crop of wheat the price support would not be less than 120 percent of the price support for corn. It is presumed that the figure for future years would come close to maintaining this relationship; however, this is something that can be satisfactorily determined only on the basis of experience.

"The approach to adjustment provided for in these two bills allows the market system to function and permits relative prices to guide the production and distribution of individual farm commodities," Senator HICKENLOOPER said.

To cushion the impact of the elimination of acreage allotments and marketing controls and the reduction in the support level on farmers producing wheat and other feed grains, Mr. HICKENLOOPER's wheat bill authorizes a substantial further expansion of the conservation reserve program. Total land in the reserve would be raised to 60 million acres at the end of 1963. The Department of Agriculture would be directed to place greatest emphasis on signing conservation reserve contracts with farmers during the first year of this expanded program.

The net effect of the two Hickenlooper bills on the size of the conservation reserve program would be about as follows:

[In millions of acres]

Year	Proposed acres in regular program (1st bill)	Additional acres under wheat program (2d bill)	Total acres in reserve
1960	28	----------	28
1961	33	9	42
1962	38	13	51
1963	43	17	60

Mr. HICKENLOOPER emphasized the necessity to provide adequate protection for all farmers from the competition of sales of accumulated wheat stocks by the Commodity Credit Corporation.

"Farmers seeking to produce for the market should not have to carry the extra burden of surpluses built up under past programs," Senator HICKENLOOPER said.

His bill provides that no wheat could be sold for domestic use by CCC at less than 150 percent of the effective support price, plus reasonable carrying charges.

Future foreign sales of wheat from CCC stocks under Public Law 480 (the Agricultural Trade Development Act) would be restricted to the average of such sales in 1957, 1958, and 1959, when a substantial portion of such sales came out of current marketings.

This would allow a similar share of future Public Law 480 export sales to be made from the current market, thus strengthening the market price received by farmers.

There would be no limit on foreign donations of CCC-owned wheat for famine and disaster relief.

The Senator said the special expanded conservation reserve program and the restrictions on CCC wheat sales are essential and integral parts of his wheat bill.

"This wheat program is fair to all," Senator HICKENLOOPER said.

"It offers the wheat grower both a realistic price and freedom to operate his own farm. Traditional wheat growers have a vital stake in this.

"It protects the producers of corn and other feed grains from the price-depressing effects of having subsidized wheat 'dumped' on their markets.

"It also protects livestock, dairy, and poultry farmers against the price-depressing effects of Government-subsidized feed grain production.

"It will give substantial relief to taxpayers by reducing the expense of the present farm program, under which storage costs for wheat total about $450 million per year and current wheat export subsidies amount to $264 million annually.

"It is consistent with good foreign relations."

Mr. HICKENLOOPER, who is also a member of the Senate Committee on Foreign Relations, emphasized that the wheat program proposed in his bill would not jeopardize the legitimate interests of nations which are customers of American wheat farmers and also our wheat-producing allies such as Canada and Australia.

"In this respect," he added, "it avoids the pitfalls of the three-price certificate plan for wheat which would, among other things, almost double the export subsidy rate for wheat.

"This legislation provides no direct subsidy payments to farmers," Senator HICKENLOOPER said.

"It does not invite our friends abroad to take harmful countermeasures against our own farm exports.

"It does not hurt any group of farmers in an effort to assist another group.

"It is consistent with the guidelines laid down by President Eisenhower in his special message.

"It should be and can be passed by Congress.

"Action in this field is overdue. Farmers, consumers, and taxpayers are demanding it.

"If Congress fails to act soon, the future of all farm price support programs will be endangered."

SELECT COMMITTEE ON FEDERAL SUBSIDIES

Mr. LAUSCHE. Mr. President, I submit, for appropriate reference, a resolution to establish a Senate select committee to be known as the Select Committee on Federal Subsidies.

There is not available anywhere a compilation of general and analytic information on the subjects of subsidies and subsidylike programs and special concessions in which the Federal Government is entrenched, and which in only the past several decades have involved the expenditure, directly or indirectly, of more than $100 billion, and now, relatively speaking, annually total many more known or unrevealed billions of dollars.

From the very limited material available on this general subject, it is impossible fairly and prudently to evaluate the effectiveness of the many subsidy and subsidy-like programs, either as to their possible curtailment or their expansion.

It appears that both subsidies and subsidylike programs were born of emergencies, and prudently would have expired at the expiration of the emergencies. Few have ceased to exist, however. Most of them are continuing, some far beyond the period of necessity.

Federal subsidies throughout the years have been expanded and broadened by the Congress without the benefit of a definite policy or formula, or without the benefit of data or other material on the history and analysis of the ultimate effect on the recipient, the Federal Government, or the taxpayer.

Mr. President, our interest in the subject of Federal subsidies, in which billions of dollars are annually involved, either through moneys given away directly or through moneys lost indirectly through tax dispensations, ought to be directed primarily toward an accumulation and documentation of the history of and the experience with all programs which fall into this category.

If the Congress and the executive branch had available to them documented reports on the history of the many programs of this type and analyses of their effects, they could more prudently and effectively determine their future courses of action, not only relative to existing subsidies, but also in evaluating the need for their continuation, and for future programs.

Mr. President, with world trade growing more competitive, our balance of payments fluctuating from plus to minus, our Federal expenditures reaching new peacetime peaks, and with the Federal Government entering into new services and programs, it now becomes imperative that we immediately review the past, in order that we may have the facilities and the recorded experience to enable us properly and prudently to guide our future course.

Mr. President, briefly, the composition of this select committee would be as follows:

It will be a 12-man committee, to be composed of 3 members of the Committee on Finance, 3 members of the Committee on Interstate and Foreign Commerce, 3 members of the Committee on Government Operations, and, finally, 3 members to be chosen at large from the Senate body, and who would not be members of any of the 3 aforementioned committees. The members who would represent the 3 committees would be chosen by the chairmen of those committees.

Mr. President, I ask unanimous consent that the text of this resolution be printed in the RECORD following my remarks.

The PRESIDING OFFICER. The resolution will be received and appropriately referred; and, without objection, the resolution will be printed in the RECORD, as requested by the Senator from Ohio.

The resolution (S. Res. 300) was referred to the Committee on Interstate and Foreign Commerce.

(See exhibit 1.)

Mr. LAUSCHE. Mr. President, I suggest the establishment of this select committee to study the subject of subsidies primarily because in the committees of which I am a member, and especially the Interstate and Foreign Commerce Committee, practically at every meeting some new proposed subsidy is mentioned, or some old Federal subsidy is mentioned with the suggestion that the subsidy be increased.

I have especially in mind the fact that the railroads of the United States, which for years have been without subsidies, have now come before the committee and are suggesting that the taxpayers of the United States must contribute to the railroads' funds, if those railroads are to continue to exist.

I think it is a grave problem. I think it has reached the stage where too many segments of our economy are saying to the taxpayers of the United States, "Unless you give, out of your pocket, as a donation to our industry, we cannot continue in existence."

If that course is to continue and to be followed, I humbly say to my colleagues on the Senate floor, and to the citizens of the United States, we are moving in the direction of governmental operation of our private industry. And if we are moving in the direction of governmental operation of our private industry, the day is not far removed when the attributes of our governmental operations will parallel the attributes of other governmental operations to which we do not subscribe.

We are moving gradually, constantly, into governmental operation of business. I do not subscribe to it.

I believe a study ought to be made so we shall know what we have done in the past and what we are heading into in the future.

Mr. President, I yield the floor.

EXHIBIT 1

SENATE RESOLUTION 300

Resolved, That (a) there is hereby established a select committee of the Senate to be known as the Select Committee on Federal Subsidies (referred to hereinafter as the "Committee").

(b) The Committee shall be composed of three members of the Committee on Government Operations, three shall be members of the Committee on Finance, three shall be members of the Committee on Interstate and Foreign Commerce, all such members to be designated by the chairmen of the respective committees, and three members shall be appointed by the President of the Senate from Members of the Senate who are not members of any such standing committees, and at least one member from each of the above committees and those appointed by the President of the Senate shall be selected from the minority membership thereof. The chairman of the Committee shall be chosen by the members thereof.

(c) Vacancies in the membership of the Committee shall not affect the authority of the remaining members to execute the functions of the Committee, and shall be filled in the same manner as original appointments thereto are made.

(d) The Committee shall adopt rules of procedure not inconsistent with the rules of the Senate governing standing committees of the Senate. A majority of the members of the Committee shall constitute a quorum thereof for the transaction of business, except that the Committee may fix a lesser number as a quorum for the purpose of taking sworn testimony.

(e) No legislative measure shall be referred to the Committee, and it shall have no authority to report any such measure to the Senate.

(f) The Committee shall cease to exist on January 30, 1962.

Sec. 2. (a) It shall be the duty of the Committee to conduct comprehensive study and investigation with respect to—

(1) the identity, nature, and effects of existing laws and programs of the Federal Government under which subsidies (including grants, payments, benefits, allowances, concessions, and relief in the nature of or having the effect of subsidies) are accorded to firms, enterprises, or organizations, or to classes of firms, enterprises, or organizations, engaged in or affecting the domestic or foreign trade or commerce of the United States;

(2) the extent to which each such subsidy is productive of public benefits commensurate with the cost or burden thereof; and

(3) legislative and other means whereby the cost or burden of such subsidies may be reduced or may be employed to greater public benefit.

(b) On or before January 30, 1961, the Committee shall transmit to the Senate a preliminary report concerning its activities and its findings and conclusions upon the subjects described in subsection (a). In January 1962 the Committee shall transmit to the Senate a final report of its findings and conclusions upon those subjects.

Sec. 3. (a) For the purposes of this resolution, the Committee is authorized to (1) make such expenditures; (2) hold such hearings; (3) sit and act at such times and places during the sessions, recesses, and adjournment periods of the Senate; (4) require by subpena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents; (5) administer such oaths; (6) take such testimony orally or by deposition; and (7) employ and fix the compensation of such technical, clerical, and other assistants and consultants as it deems advisable, except that the compensation so fixed shall not exceed the compensation prescribed under the Classification Act of 1949, as amended, for comparable duties.

(b) Upon request made by the members of the Committee selected from the minority party, the Committee shall appoint one assistant or consultant designated by such members. No assistant or consultant appointed by the Committee may receive compensation at an annual gross rate which exceeds by more than $1,200 the annual gross rate of compensation of any individual so designed by the minority members of the Committee.

(c) With the prior consent of the executive department or agency concerned and the Committee on Rules and Administration, the Committee may (1) utilize the services, information, and facilities of any such department or agency, and (2) employ on a reimbursable basis the services of such personnel of any such department or agency as it deems advisable. With the consent of any other committee of the Senate, or any subcommittee thereof, the Committee may utilize the facilities and the services of the staff of such other committee or subcommittee whenever the chairman of the Committee determines that such action is necessary and appropriate.

(d) Subpenas may be issued by the Committee over the signature of the chairman or any other member designated by him, and may be served by any person designated by such chairman or member. The chairman of the Committee or any member thereof may administer oaths to witnesses.

Sec. 4. The expenses of the Committee under this resolution, which shall not exceed $125,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the Committee.

PROGRAM OF PUBLIC HEARINGS BY COMMITTEE ON FOREIGN RELATIONS

Mr. FULBRIGHT. Mr. President, I ask unanimous consent to have printed in the RECORD at this point as a part of my remarks a press release from the Committee on Foreign Relations, with regard to the program of that committee.

There being no objection, the press release was ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON FOREIGN RELATIONS, PRESS RELEASE, APRIL 5, 1960

Senator J. W. FULBRIGHT, chairman of the Senate Committee on Foreign Relations, announced today that on April 12, 1960, at 10 a.m. in room 4221, New Senate Office Building, the committee will hold a public hearing on the following subjects:

1. Executive A, an agreement between the United States of America and the Republic of Austria regarding the return of Austrian property, rights, and interests signed at Washington on January 30, 1959.

2. S. 3072, a bill to authorize the Secretary of the Treasury to effect the payment of certain claims of foreign nationals against the United States.

3. S. 3008 and S. 2634, bills to amend the International Claims Settlement Act of 1949, as amended.

Any persons interested in testifying on the matters set forth above are urged to communicate with the clerk of the Committee on Foreign Relations without delay.

PRESERVATION OF WILDERNESS AREAS

Mr. KUCHEL. Mr. President, about a month ago, here in Washington, I said:

If any of the primeval beauty of America is to be saved for future generations, Congress needs to act and to act now.

I sound that warning again here in the Senate Chamber today. After 3 years of intensive hearings, the Senate Interior and Insular Affairs Committee has pending before it a carefully prepared bill to preserve the few areas of true wilderness which yet remain in our country in their pristine primitive beauty. I do not believe any useful purpose would be served by any further hearings on the matter. This is the time for action. We need the earliest approval of the wilderness bill in our committee, so that we may take it up in the Senate and, as I hope and believe, pass it here in time for similar action in the House of Representatives.

The bill would create a national wilderness preservation system. It would serve the American people now and in all the future. It is urgently supported by sound conservation groups. I think it can truthfully be said that the plain people support it. It should be enacted into law in this present session of Congress. Failure to adopt this measure, in my view, would be a national tragedy.

Mr. President, I ask unanimous consent that at this point in my comments there be printed in the RECORD the following: First, a newspaper article on the matter under date of March 12, 1960, published in the Sacramento Bee of Sacramento, Calif.; next, an editorial from the Sacramento Bee of March 16, 1960; next, an editorial from the Los Angeles Mirror-News of Los Angeles, March 22, 1960; next, an editorial of recent date from the San Diego Evening Tribune, San Diego; next, an editorial from the Nevada County Nugget of Nevada City, Calif., March 23, 1960; next, an editorial dated March 15, 1960, from the San Francisco Examiner, San Francisco; next, an editorial dated March 11, 1960, from the Pasadena Star-News, Pasadena; and next, an editorial dated March 23–24, 1960, from the San Francisco Progress, San Francisco.

Mr. President, I also ask unanimous consent that next in order there be printed in the RECORD a copy of a letter dated March 21, 1960, which I wrote to the distinguished chairman of the Committee on Interior and Insular Affairs [Mr. MURRAY] asking that we be given an early opportunity to vote on the wilderness measures; next, the letter to me from the chairman dated March 25, 1960, in which the chairman indicates he has asked the able junior Senator from Washington [Mr. JACKSON] to act as chairman of the committee for continuation of the bill and, last, a letter to me under date of April 1 from the distinguished junior Senator from Washington [Mr. JACKSON] in which he tells me he wants to have a meeting of our committee as soon as possible so that final committee action may be taken forthwith.

There being no objection, the articles, editorials, and letters were ordered to be printed in the RECORD, as follows:

[From the Sacramento (Calif.) Bee, Mar. 12, 1960]

KUCHEL, ENGLE URGE CONGRESS ACTION TO PRESERVE WILDERNESS AREAS

(By Edward H. Dickson)

WASHINGTON.—Both California Senators today declared Congress should act to preserve wilderness areas for the enjoyment of future generations of Americans.

Senator THOMAS H. KUCHEL, the Republican assistant minority leader, gave a strong endorsement to a bill developed by the Senate Interior and Insular Affairs Committee of which he is a member.

Senator CLAIR ENGLE, Democrat, was less specific as to the legislative vehicle to employ but emphasized that some sort of wilderness measure should be passed.

KUCHEL STATEMENT

Senator KUCHEL declared:

"If any of the primeval beauty of America is to be saved for future generations, Congress needs to act and to act now.

"Nature lavishly has endowed our country with a scenic grandeur sweeping across mountains and valleys, fields and streams, verdant forests, and colorful plains.

"Too much of it already has suffered from a despoiling unmistakenly documented in 3 years of public hearings before the Senate Interior and Insular Affairs Committee. Wilderness legislation, designed to protect lands in the public domain which are yet unspoiled, is long overdue.

"Pending before the committee is a carefully prepared bill, the result of 3 years of study. It has been revised and refined. It recognizes the public purposes of recreation, scenic, educational, conservation, and historical use in wilderness areas. It is entirely reasonable."

Against set-asides

"The bill authorizes, under proper procedures, the withdrawal of areas in the wilderness system. It provides against set-asides which would be unreasonable to the

mining, grazing, or lumbering industries. In no sense would it upset our economy.

"The bill simply and at long last provides for the preservation of certain Federal lands in their historic natural beauty.

"The value of this kind of legislation has been recognized by the Interior and Agriculture Departments. Their suggestions are incorporated in the present wording of the bill.

"I look forward eagerly for an opportunity to vote for the wilderness bill now before our committee.

"I will oppose amendments to it which would delay action and probably send it down to a wholly undeserved defeat."

ENGLE STATEMENT

Senator ENGLE had this to say:

"I think we should have some wilderness areas to preserve, at least a small part of our national forests and public domain in their original state for future generations, as nearly as that can be done.

"There are several proposals before Congress.

"I don't know which one of these is best calculated to accomplish the desired preservation of wilderness areas in the most practical manner but I think that legislation for that purpose can and should be passed."

HEARINGS HELD

Extended hearings have been held on wilderness legislation by the Senate committee during the last 3 years, both in Washington, D.C., and in the field.

As is often the case, proponents and opponents were miles apart when the proposal first was made and the present measure represents a compromise which appears to be satisfactory generally to both sides. There still are some, however, who feel the bill does not go far in preserving the wilderness and those who contend it locks up too much acreage against multiple-use purposes.

KUCHEL AMENDMENT

Important to California during consideration of the measure was the adoption of an amendment offered by Senator KUCHEL which permits States to utilize water in a wilderness system. This protects the California State water plan and was backed by the State government.

Senator JOSEPH O'MAHONEY, Democrat, of Wyoming, is pressing for amendments which backers of the legislation claim would cut the heart out of the bill by allowing the exploitation of wilderness areas for grazing, mineral prospecting, and oil and gas development.

The fate of the bill is uncertain and if it is not passed at this session of Congress an entirely new start will have to be made in the new Congress convening in January of 1961.

The Senate, as a result of the civil rights filibuster, has a heavy calendar to dispose of before the scheduled adjournment early in July. This is a definite advantage to the opponents who can adopt delaying tactics.

Furthermore, the House Interior Committee has not even scheduled hearings and the House, as well as the Senate, must pass the bill before it can become law.

It is unlikely that opponents would accept the Senate bill without House committee hearings. The House committee itself probably would be highly reluctant to pursue such a course.

[From the Sacramento (Calif.) Bee, Mar. 16, 1960]

KUCHEL FOR WILDERNESS

U.S. Senator THOMAS H. KUCHEL, of California, makes some excellent points in supporting legislation to set aside parts of the public domain as wilderness areas.

Such action, he stated, is long overdue to preserve areas of great natural and scenic beauty for future generations; all too much of these lands already has suffered irreparable spoliation.

KUCHEL termed the measure, as now pending before the Senate Interior Committee, a reasonable bill which deals fairly with mining, grazing and lumbering interests.

The Republican minority whip properly takes the position that a wilderness program cannot be developed on a piecemeal basis and he served notice he will oppose any amendments to curtail the scope of the bill.

The emphatic words of Senator KUCHEL should have a strong bearing on the outcome of the deliberations over the measure inasmuch as some members of his party in the past have not supported the wilderness program.

He has earned the gratitude of those who believe a part of America should be preserved in its natural, majestic state for the enjoyment of this and future generations.

[From the Los Angeles (Calif.) Mirror-News, Mar. 22, 1960]

A VITAL ISSUE

Senator KUCHEL, of California, has thrown his support to the bill to preserve 55 million acres of Government-owned land across the Nation as unspoiled recreation areas.

Senator KUCHEL's position as minority whip in the Senate makes his assistance important on a vital issue.

The Mirror-News is on record in favor of designating surviving areas of natural beauty as national playgrounds for all time. We will leave a shameful heritage of despoiled woodlands, mine tailings dumps and hot dog stands to future generations unless this bill is made law.

[From the San Diego (Calif.) Evening Tribune]

PROTECTION FOR SCENIC BEAUTY

Senator THOMAS H. KUCHEL, Republican, of California, is backing a bill in Congress to create a wilderness system in the public domain to preserve areas of great natural beauty for future generations of Americans.

This is a proposal that deserves thoughtful study.

"Nature has lavishly endowed our country with a great scenic grandeur, sweeping across mountains and valleys, fields and streams, woodland forests and colorful plains," KUCHEL said recently.

"All too much of it already has suffered from spoliation which has been unmistakably documented. So-called wilderness legislation, designed to protect lands in the public domain which are yet unspoiled is long, long overdue."

There are, of course, other valid interests that need to be protected. In this respect, KUCHEL says the bill now in the Senate Interior and Insular Affairs Committee "deals fairly" with mining, grazing and lumbering industries. States rights to use water from any areas included in the wilderness system also are protected.

Once lost, our natural beauties seldom can be recaptured. An overall plan for preserving them now is preferable to piecemeal legislation.

[From the Nevada County (Calif.) Nugget, Mar. 23, 1960]

WILDERNESS BILL IS VITAL LEGISLATION

Senator THOMAS KUCHEL, California Republican, is quoted in a recent edition of the Sacramento Bee as being strongly in favor of S. 1123, the wilderness bill, now before the Senate. For his stand, and for his intelligent appraisal of this vital bill, he deserves warm praise.

For in attempting to preserve wilderness you do not make compromises, or you wake up one fine overpopulated morning without any wilderness at all.

The wilderness bill has been argued for 3 years. It has been refined to the point where further refinement would serve to open up wilderness areas to the very exploitation the bill seeks to prevent.

The basic provisions of the bill are simple, and, we believe, sound. All Government-owned land now technically designated and protected as wilderness, would become a part of a national wilderness system. It would no longer be possible for a wilderness area to lose its status simply by the decree of a nonelected Government administrator.

In effect, the bill would prevent a national administration not in sympathy with wilderness preservation from turning wilderness to other uses before consulting the owners of the land, the people of the United States, through their Representatives in Congress.

Any who have traveled to the Desolation Valley area west of Lake Tahoe, or to any of the other magnificent wilderness areas along the crest of the Sierra Nevada, know that wilderness is not just an idea, it is a living reality, a heritage of beauty and inspiration and history which we must pass on to our children as our fathers have passed it to us (there is little enough in today's world that we can be proud to hand to our children).

As a further practical matter, we of the Sierra counties have a vital interest in the wilderness bill. For it seeks to protect what is the essential appeal of the Sierra as a vacationland—wide open spaces providing fine fishing, camping, hiking, and all-around "horseplay." Even though there is no technically designated wilderness in Nevada County, we surely benefit—and will benefit more as the years pass—by the Sierra's reputation as a harbor of wilderness. (And of course Nevada County does possess the finest of high mountain scenery.)

The wilderness bill, S. 1123, should be voted on in this session of Congress, and passed without crippling amendments. We urge our readers to write Senator KUCHEL supporting his intention to vote "yes."

[From the San Francisco (Calif.) Examiner, Mar. 15, 1960]

THE FIGHT TO SAVE OUR WILDERNESS

Few areas of true wilderness remain in our country, and each day they grow more precious because more scarce. They do not belong to living Americans in fee simple, to do with as we like. They came to us in trust, as part of our inheritance, with the obligation that we pass them on undisturbed to future generations.

Today the pressures to break that trust are heavy. In part they come from exploiters, though these are not numerous. The greatest pressure is one for which none of us and all of us are responsible. It is the massive, all-pervasive, all-encompassing force of explosive population growth. Unless the trust is made all but unbreakable, it will not stand against that pressure. And time is short.

Pending in the U.S. Senate is a measure, S. 1123, to create that kind of trust. Commonly called the wilderness bill, the measure would create a National Wilderness Preservation System. Into that system would be deposited virtually all of the federally owned areas now designated as wild, wilderness or primitive areas, the unspoiled back country of national parks and monuments, and some wildlife refuges and other minor areas.

No private lands would be added to Federal ownership by this bill, nor would any Federal lands be designated as wilderness that are not already so designated. Why then, you may ask, is the bill necessary?

Because these lands have a wilderness status only by administrative decree, and could lose that status by another administrative decree. Bitter experience has shown that such losses do occur. The wilderness needs the protecting arm of a strong, un-

ambiguous law, and would get it under the wilderness bill. That is why we strongly urge public support for its passage.

The bill is particularly vital to Californians. They have the most wilderness to protect; at the same time the threat is acute here because of our abnormally rapid population growth and great tourist popularity.

Twenty-seven areas in California, constituting 9,000 square miles, would be preserved as wilderness. More than half of that is contained in just three areas. Death Valley National Monument, Joshua Tree National Monument, and the Yosemite National Park back country. Most of the remainder is in northern California's national forests.

These are all places where man is a visitor, not an inhabitant, and so they should always be. For man the urban dweller remains a child of nature, with a deep-seated need for wilderness where he can go and refresh his spirit, but not stay. He will destroy the last remaining wilderness only at his peril.

[From the Pasadena Star-News, Mar. 1, 1960]

PRODDING IS INDICATED FOR WILDERNESS BILL

The voice of the electorate is needed to encourage favorable action on the bill now in Congress that would protect an estimated 55 million acres of wilderness already lying within such federally controlled areas as national parks, forests and wildlife refuges.

The measure has wide support from conservationists, newspapers, and others. Its opponents are easily identifiable as lumber, mining, livestock, and oil industries, and road and dam builders.

Exactly what would this bill do? It would prevent any Federal official, from a Cabinet member on down, from abolishing or reducing a wilderness area by Executive order. The measure simply would establish a line of authority. It involves no appropriations and no additional personnel.

The small amount of publicly owned, unspoiled wilderness remaining in this country is under constant assault by interests that want to penetrate it and exploit it economically. We owe our national parks to the successful battles waged by conservationists to set these areas aside. Had not conservationists intervened, for example, there would not be a single redwood tree in California today.

Very little remains of unspoiled wilderness areas. Allen H. Morgan, executive vice president of the Massachusetts Audubon Society, has warned, "What we save in the next few years is all that will ever be saved."

The citizenry, to whom public lands belong, can save the situation by writing to their legislators at once.

[From the San Francisco (Calif.) Progress, Mar. 23, 1960]

SAVE THE WILDERNESS—MONUMENT TO A MAN

Though Richard L. Neuberger, of Oregon, was in but his first term in the Senate when he died at the age of 47, 2 weeks ago, he was already one of the greatest of our contemporary Senators.

To such men we usually erect monuments. For Richard Neuberger there could be no finer monument than the passage of the National Wilderness Preservation Act setting aside large areas of our country forever to remain as they were created by nature.

Richard Neuberger had many causes. He pushed for Government support of medical research—particularly in the field of cancer, a disease which he, himself, had conquered. There was no stronger spokesman in the Senate for the protection and advancement of human rights and the fulfillment of human needs.

But he also loved the wild, and fought to preserve our great scenic areas from destruction: whether from the pressures of population, the exploiting buzz saws and drills of private firms, or the billboards of the Interstate Highway System.

"Three billion years is a long time for each of us to be occupying the dark recesses of some sarcophagus," he wrote. "Why not be under the sun and bright heavens and stars during our fleeting hours above ground? Should we immolate ourselves in steel and masonry when we are alive?"

The wilderness bill, now before Congress, provides that thousands of acres of public land, currently designated as parts of national forests, national parks and monuments, national wildlife refuges, and Indian reservations, shall be preserved as wilderness and be subject to the surveillance of a National Wilderness Preservation Council. Reads the bill:

"A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain."

The measure is of transcendent importance to Californians. With each passing year, the population of this State leaps, and open land becomes scarcer. The bill, if enacted, would mean that 1,551,371 acres of land in California would be preserved as wilderness for us and future generations. Most of this land is in the Sierra, with other large areas designated in the far north and in the Los Angeles region. Thousands of acres are accessible within a 4-hour drive from San Francisco.

The bill has the strong support of Senator THOMAS KUCHEL. "If any of the primeval beauty of America is to be saved for future generations, the U.S. Congress needs to act and to act now," he declared.

But the California Chamber of Commerce is on record as opposing the measure. Instead, these gentlemen urge that such areas be designated for multiple use. By this, they mean that lumbering, mining, and other commercial activities be allowed in the wilderness.

What the chamber fails to understand is that wilderness is incompatible with any other use. The moment a piece of the wild is transformed by an act of man, that area is no longer wild. Wilderness is the living record of the powers of the universe at work, a place where men can go to observe and learn about the natural laws and forces that govern our existence.

The hardheaded, practical leaders of the business world do not yet realize that space—as forest, as mountain, as lake, as prairie—is today America's most precious natural resource.

MARCH 21, 1960.

Hon. JAMES E. MURRAY,
Chairman, Interior and Insular Affairs Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR: The needs of present and future generations of the American people impose an inescapable duty upon the Congress to adopt farsighted policies and programs for preserving and maintaining portions of the public domain which are endowed with extraordinary grandeur, unique geological and topographic features, and significant inspirational characteristics.

For 3 years, study has been made of the proposed means by which this responsibility may be discharged. In the meantime, the constant pressures of growth of our Nation present increasing threats to the sanctity of such areas which must not be despoiled by strong and ever-present forces of growing population and economic advancement.

The remarkable scenic and recreational resources which are embraced in federally owned lands must be protected and set aside with the least delay. In my estimation, legislation for this purpose is long overdue.

It is my belief that no further deliberations are necessary on this legislation to establish a wilderness system in the public domain. The time for positive action has arrived. Failure to pass a bill at this session enabling the executive branch of the Federal Government to embark on a sound program in the immediate future would be both a tragedy and a shameful dereliction.

I believe that the bill in its present form is an entirely reasonable measure. It provides procedures, for example, for withdrawal of areas in the wilderness system. It contains provisions against set-asides which would be unreasonable to the mining, grazing, or lumbering industries. Suggestions from the Departments of Interior and Agriculture have been incorporated into the bill.

I am writing to urge you to schedule at the earliest practicable date a decisive vote of our committee on legislation which has been revised and perfected, after extensive hearings and discussion, to safeguard and perpetuate in all their magnificence and naturalness these precious resources. I very much hope that a meeting will be called in the very near future so that we may report a bill in sufficient time for its consideration and action by the Senate with encouraging prospects for final passage at the present session.

With warm personal regards, I am,

Sincerely,

THOMAS H. KUCHEL.

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
March 25, 1960.

Hon. THOMAS H. KUCHEL,
U.S. Senate, 1327 New Senate Office Building, Washington, D.C.

DEAR SENATOR: I agree with everything you say about the wilderness bill in your letter of March 21.

Because of other commitments, I have asked Senator JACKSON to chair the committee for continuation of the bill. I know he is going to call meetings on it as quickly as possible, but I shall refer your letter to him.

Sincerely yours,

JAMES E. MURRAY,
U.S. Senator.

U. S. SENATE,
COMMITTEE ON ARMED SERVICES,
April 1, 1960.

Hon. THOMAS H. KUCHEL,
U.S. Senate, 1327 New Senate Office Building, Washington, D.C.

DEAR TOM: Senator MURRAY has forwarded me a copy of your letter of March 21 to him concerning the pending wilderness bill, and a copy of his reply of March 25 to you.

I am anxious to schedule a further meeting on the bill as soon as possible in order for the committee to take final action. In the meantime, I want you to know how much I appreciate your constructive approach to the measure and how much I value your support for the bill in its present form.

Warmest regards.

HENRY M. JACKSON,
U.S. Senator.

VOTES FOR CITIZENS OF THE DISTRICT OF COLUMBIA

Mr. YOUNG of Ohio. Mr. President, it is high time that the residents of the District of Columbia be given home rule and local self-government. In fact, the hour is very late, and before adjournment of this session of Congress the Congress should accord to the residents of the District of Columbia the same voting rights as other citizens of America.

Residents of the District of Columbia pay taxes to support the Government,

yet at the present time they are not permitted to vote. We Americans believe in home rule and local self-government. Why should we deny this right to Americans who reside in the District of Columbia?

The city of Washington, D.C., functions under the indulgence—or lack of it—of the Congress, which appropriates funds for District governmental operations.

Mr. President, an excellent editorial in the great Scripps-Howard paper, the Columbus Citizen-Journal of Columbus, Ohio, calls for a square deal for District of Columbia residents.

Entitled "Washington Is in Trouble," the editorial points out that Washington's higher income groups and businesses have been moving out of the District. It warns if this trend continues the city will become nothing but magnificent Federal buildings surrounded by slums.

I ask unanimous consent to have this editorial printed in the RECORD at this point, and I embody it as a part of my remarks. The editor and those associated with him in the editorial department are familiar with problems of the Capital of the United States as Columbus is the capital city of Ohio.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

WASHINGTON IS IN TROUBLE

Our Scripps-Howard colleague, Editor John T. O'Rourke, of the Washington Daily News, appeals for some help from us outlanders.

The city of Washington, District of Columbia, is our National Capital and all, but it's also the home town of thousands who are born, live, and die there.

If we have trouble at our city hall, imagine Washington's troubles. It has to look to Congress for some of the dough to pay its police and firemen, sweep the streets, and do all the other things a city needs.

If we don't like our city government, we can vote it out, as we frequently do. But while Congress sweats and strains over civil rights and the vote for Negroes in the South, citizens of Washington smile grimly.

They can't vote at all. The paternal care of Congress for these voteless people has been pretty unfatherly of late.

Hear Editor O'Rourke:

"About half of the District of Columbia's total area is occupied by the Federal Government (the town's principal industry), and organizations and establishments connected with it, such as embassies, and so on. All this area is tax free."

We can understand that in Columbus, for we, too, have much area occupied by State government buildings, institutions, and the State university.

"This fact was recognized by Congress," Mr. O'Rourke admits, "and as an offset Congress set up a system of proportional payments, later changed to a lump-sum system.

"But as the city's costs rose this lump sum grew smaller. From a fixed percentage of 50 percent during the period of 1879 to 1921, the Federal payment has been cut until it is only 16 percent of the budget for 1960."

The 16 percent would be $32 million, if paid. But, as Congress frequently does, it authorizes without appropriating. It's mumbling in its beard now about paying only $26 million instead of the $32 million.

Washington citizens pay real estate and excise taxes comparable to those in neighboring communities in Virginia and Maryland.

Washington's higher income groups and businesses have been migrating to the suburbs, even more rapidly than in other cities. If this goes on, and if Congress continues to starve the municipal government of Washington, our proud Nation's Capital will become a city of magnificent Federal buildings set amid a clutter of private slums.

Since the people of Washington can't vote the rascals out themselves, it behooves us as politically potent fellow citizens of theirs to urge our Congressmen to treat them more humanely.

So, Senators LAUSCHE and YOUNG, Representative SAM DEVINE and all the other Ohio Congressmen, see that you treat Washington—which is our National Capital, too—and the people who live there, better than you are now.

Either give them a square deal or give them the vote and autonomy. Then they can do what Columbus does—collect city income taxes on all salaries paid within its borders, including the salaries of Congress and of the man who lives in the White House.

THE PROMISE OF TIROS I

Mr. CASE of South Dakota. Mr. President, orbiting the earth at this moment is a picture-taking weather satellite, Tiros I, that ranks as one of the greatest scientific achievements of all time.

This satellite shows the world that the United States is not looking at space with military supremacy alone in mind. Our Nation has now demonstrated that scientific exploration of space for the good of mankind is just as important to us as the ability to launch long-range missiles with hydrogen warheads.

It has been indicated, of course, that such satellites could be used to observe military movements or installations of potential enemies, as well as their missile shots.

But, of greater significance to the world, it gives us the ability to piece together cloud-cover pictures of an area 3,500 miles long and 1,700 mile wide.

This will permit more accurate daily forecasts, better long-range predictions and more useful warnings about hurricanes and other violent storms.

And, as the Washington Daily News points out: "Indeed, scientists say, such a system of satellites might even shed new knowledge on nature's weather factory which someday could be used to tame hurricanes, curb lightning, make rain, prevent hail and calm winds."

As one who has long been interested in weather modification research, I applaud the technological excellence of our space scientists which has made this major breakthrough possible. I congratulate Dr. T. Keith Glennan, Director of NASA, who has directed this project and I commend this administration which encourages the nonmilitary exploration of space while improving our defense capabilities.

While it is necessary, of course, to continue our efforts in the missile field for defense purposes alone, there is little benefit for mankind in the successful launching of a military missile. If such experiments can be combined with scientific aspects, then the whole human race profits.

It is a striking challenge to our competitors in the space race. Now it is up to them to show the world that they are not concentrating on military missile muscle-flexing alone.

The promise held out to the farmers and livestock producers of my State alone by the implications of Tiros I would warrant this research.

For years the farmers of South Dakota, whose greatest nemesis is unfavorable weather, have been dipping into their own pockets to finance experiments aimed at increasing rain. With the help of weather satellites like Tiros I, perhaps their dream of exercising some control over the weather that can make or break a whole year's work will be realized.

Mr. President, articles appearing on April 2 in the Washington Daily News and Washington Post indicate the clear preponderance of American successes in space and show that these successes have been linked with peaceful intent.

I ask unanimous consent that these three articles be included in the RECORD at the close of my remarks.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Daily News, Apr. 2, 1960]

U.S. AIM IS GALAXY OF WEATHER SATELLITES

(By John Troan)

CAPE CANAVERAL, FLA., April 2.—U.S. space scientists set their sight today on a global girdling galaxy of weather satellites.

Buoyed by yesterday's launching of a 270-pound cloud-scanning "moon," the scientists are eyeing the feasibility of orbiting a family of seven satellites to act as around-the-clock robot weathermen.

The whole idea is still but a vision on the research horizon. Yet scientists with the National Aeronatics and Space Administration and the Army Signal Corps, who teamed up for yesterday's launching here, are confident the weather-satellite network will be a reality by 1970.

Six of these satellites would travel in north-south directions, thus scanning cloud formations and other weather disturbances over the entire world.

The seventh would remain fixed 22,000 miles above the equator, staring at suspicious spots where storms might be brewing.

RELAY

From them, information would be relayed to the ground to help weathermen draw up more accurate day-to-day forecasts, better long-range predictions and more useful warnings about hurricanes and other violent storms.

Indeed, scientists say, such a system of satellites might even shed new knowledge on nature's weather factory which someday could be used to tame hurricanes, curb lightning, make rain, prevent hail and calm winds.

Tiros I, the satellite fired here yesterday, is now circling the earth every 99 minutes at an altitude of 435 to 468 miles. With its two television cameras, each the size of a drinking class, it is taking pictures of the clouds and transmitting these to the ground on command.

Though the satellite can see for 1,600 miles across and is expected to yield a wealth of information, Tiros I has two major shortcomings:

1. It can't view the clouds over the entire world because it's traveling from west to east instead of north and south.

2. It sees only in the daytime, when the cloudtops are lit up by the sun.

[From the Washington Daily News, Apr. 2, 1960]

OUR EYE IN THE SKY COULD BE A SPY

The spectacular photos flashed back to earth by America's new Tiros TV satellite made it clear today that such eyes in the sky eventually could be used to spot Russian military moves.

Scientists emphasized that the 270-pound Tiros, carrying two TV cameras, was designed only to snap pictures of the earth's cloud cover that will lead to more accurate weather forecasts and could help man control climate.

But the Tiros pictures, whose clarity surprised even scientists working on the project—plainly were a giant step toward a military reconnaissance satellite.

LAUNCHED YESTERDAY

The drum-shaped Tiros was launched yesterday by a three-stage Thor-Able rocket from Cape Canaveral. It is circling the earth once each 99.15 minutes.

The Tiros pictures released were not sharp enough to disclose ground details that would be of military value.

But there was no way of knowing how many possibly clearer photos were withheld on security grounds. The satellite's orbit takes it over Russia.

The Tiros project is not connected with military reconnaissance satellite programs. Scientists, however, are sharing data.

The Defense Department is planning a Midas infrared satellite to detect the flaming exhaust of Russian intercontinental ballistic missiles almost as soon as they are launched and a Samos military spy-in-the-sky satellite.

NEW VISTAS

Even without its military implications, Tiros opens new vistas for weather forecasting and control.

Scientists will relate the Tiros photos to the weather the earth was having at the moment. This will enable them to read meaning into pictures from a second Tiros satellite planned for later this year.

The second Tiros also will carry infrared sensing devices to give scientists a picture of heat patterns on the earth.

Russia is planning space weather stations but has not yet launched one. In its first few circuits, the U.S. satellite spotted a big storm over the American Midwest.

At its lowest point the satellite is 435.5 miles above the earth and at its highest point 468.28 miles. The orbit is at an angle of 48.327 degrees northeast from the equator, almost exactly what the scientists wanted.

HOW IT WORKS

Tiros' TV cameras and transmitting radios will operate for about 3 months but the satellite will continue orbiting the earth for "tens of years."

The two TV cameras transmit pictures to ground stations where they are pieced together. In this way a panoramic view can be obtained of an area 3,500 miles long and 1,700 miles wide.

Connected to each camera is a magnetic tape recorder. When out of ground station range, the satellite can record up to 32 photographs for later relay to earth.

[From the Washington Post and Times Herald, Apr. 2, 1960]

NEW SATELLITE IS THIRD HEAVIEST NOW IN EARTH'S ORBIT

(By the Associated Press)

Tiros I took its place yesterday as the third heaviest satellite now in orbit around the earth.

The meteorological satellite weighs 270 pounds.

In orbit also is the 50-pound casing of the third stage of the launching vehicle, which was forcibly detached from the satellite after both started their journey round the earth.

The heaviest of the dozen earth satellites now in orbit is the Soviet Union's Sputnik III, a cone 11 feet long and 5 feet 8 inches wide at its base, which weighs 7,000 pounds, including its 2,925 pounds of instruments.

Sputnik III is expected to fall from its orbit soon.

The heaviest U.S.-made artificial moon now in orbit is considered sky garbage because it was not designed to go into orbit and provide useful information. It is the once-called "mystery satellite," later identified as the 300-pound capsule of the Discoverer V satellite launched August 13, 1959.

Discoverer V fell into the earth's atmosphere last September 28, but the capsule, designed to be ejected downward and recovered by plane, by chance went into orbit and has remained there.

Besides Tiros I, two other satellites are broadcasting information to earth by radio. They are the 3¼-pound Vanguard I, launched March 17, 1958, and the 92-pound Explorer VII, launched last October 13.

The other satellites, all silent, are Explorer I, 30.8 pounds; Beta I, the 50-pound third stage of the rocket that launched Vanguard I; Vanguard II, 20.75 pounds; Alpha II, the 50-pound rocket body of Vanguard II; Explorer VI, 142 pounds; Vanguard III, 50 pounds, plus a 50-pound attached third stage; and Iota II, the third-stage rocket body of Explorer VII.

In addition to these satellites, there are in orbit the Pioneer IV, Pioneer V, Lunik I and Lunik III space probes. Pioneer V still is broadcasting information back to earth from some 2 million miles out in space.

The heaviest U.S. satellite ever launched was the Atlas talking satellite, which weighed 8,750 pounds, but carried a scientific instrument load of only 150 pounds. During its brief lifetime, from December 18, 1958, to January 21, 1959, the satellite, for the first time, beamed a human voice to earth from space.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CANADIAN-AMERICAN RELATIONS

Mr. JAVITS. Mr. President, a bright picture of the friendly relations that exist between Canada and the United States was drawn by the Honorable Richard B. Wigglesworth, U.S. Ambassador to Canada, at the dinner held March 23 by the Massena, N.Y., Chamber of Commerce. Ambassador Wigglesworth emphasized the growing importance of trade between the United States and Canada, and the many ways by which greater understanding and cooperation are constantly being developed in addition to normal diplomatic and consular channels.

A pattern of action exists between our two countries which sets an example for the rest of the free world. It shows the way to greater integration of the free world as economic and social aims assume mounting importance.

I had the honor to serve with Ambassador Wigglesworth in the House of Representatives. I had the honor of visiting him in Ottawa. I also had the honor of attending a luncheon given by the distinguished Prime Minister of the Dominion of Canada and his Cabinet for Ambassador Wigglesworth and myself, to discuss the relations and interests of our two countries. It is with great pleasure, therefore, that I noted that there was printed in the CONGRESSIONAL RECORD of March 31, 1960, an address on Canadian-American relations by Hon. Richard B. Wigglesworth, former Representative in Congress from Massachusetts, and now Ambassador from the United States to the Dominion of Canada.

DESEGREGATION IN THE DISTRICT OF COLUMBIA SCHOOLS

Mr. JAVITS. Mr. President, I think all of us should be deeply interested in a report from the Superintendent of Schools in the District of Columbia, which was published by the Anti-Defamation League of B'nai B'rith. The report is from School Superintendent Carl F. Hansen, and it shows that desegregation in the public school system in the District of Columbia has resulted in better education and higher standards for all schoolchildren, rather than a debasement of standards, which is an argument constantly being used against school desegregation.

In my view, the Supreme Court was right. We cannot have a country in which 10 percent of the population finds its children relegated, in major sections of the country where population is very heavy, to schools which are clearly earmarked as segregated schools. This is bound to have an effect upon their characters, upon their educational advancement, and upon their capability for giving the full benefit of their talents to the United States. We cannot waste this asset.

This is essentially the argument of the pro-civil-rights advocates on school desegregation. I am glad to be numbered among them. I believe that our contention is borne out by the actual experience in the District of Columbia, which is far better than all the speeches in the world.

I ask unanimous consent that an article entitled "Schools Reported Better in Wake of Desegregation," published in the Washington Post of April 4, 1960, dealing with the report of School Superintendent Hansen, be printed in the RECORD at this point as part of my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SCHOOLS REPORTED BETTER IN WAKE OF DESEGREGATION

(By Erwin Knoll)

Five years of public school desegregation in the Nation's Capital have given students rising achievement levels, better teacher efficiency and more educational services, School Superintendent Carl F. Hansen reported yesterday.

The District's prompt compliance with the Supreme Court's 1954 desegregation decision "prepared the ground for a total attack upon the improvement of instruction," Hansen said.

His findings were published by the Anti-Defamation League of B'nai B'rith as a 32-page pamphlet called "Addendum: A 5-Year Report." It supplements another pamphlet, "Miracle of Social Adjustment," written by Hansen for the league in 1957.

In the new study, Hansen reviews the progress of the schools under the momentum of a new concept, as a system operating in the American tradition to meet the educational needs of all the children.

MANY YOUNGSTERS LAGGED

Citywide pupil testing after desegregation revealed to an appalled community that many Negro youngsters lagged far behind white children in school achievement, Hansen says.

"Although school desegregation does not eliminate the deep-seated causes of social, economic, and cultural development," he notes, "it does provide the opportunity for an equal sharing of educational resources, for a greater amount of acculturation resulting from the joining together of teachers and pupils in the school setting and for a united effort to improve educational services to all children."

Citywide averages on standardized tests, which showed lags of several months to several years behind national achievement standards 5 years ago, have climbed steadily since desegregation to approach—and in some instances match or surpass—national norms, Hansen reports. He adds:

"Integration has not retarded the advancement of high-ability students, Negro or white, and educational standards in the District public schools, when examined in relation to students' preparation and ability for learning, are high."

Hansen cites three major educational changes introduced in recent years, although he says they "should not be directly related to desegregation:"

"The track system of ability grouping, introduced several years ago at the senior high school level and this year in junior high and elementary schools, which supplies maximum challenge for the gifted as well as the slow.

"The increase in required subjects, reducing the cafeteria-like selection of courses, the window shopping and bargain hunting for easy grades characteristic of the system it replaced.

"The new stress on systematic, organized instruction in the basic subjects, which," Hansen asserts, "is bringing a return to the point of view that the teacher is the director of instruction in the classroom, the dynamic source of interaction between pupil and materials or content of instruction, the cultivated adult who can instruct pupils in what he knows and who can induce them to reach out for knowledge and to enjoy the satisfactions of accomplishment."

Hansen notes that the academic gains of recent years have been accomplished in the face of a steady increase in the proportion of Negro pupils which began long before desegregation and has continued since. This year, some three-quarters of the District's school enrollment is Negro.

He says it is "a defect in analysis" to blame desegregation for population shifts because "an examination of the problems of every major city in this country will show that like massive amoebas they are ingesting, without plan or reason, masses of economically deprived people of every race.

"In most of these cities, schools have been integrated from the beginning. In some, schools are still segregated. The least that can be done for the children of the economic and social ghettoes is to provide the best possible education."

STANDARDS NOT LOWERED

Hansen says desegregation has brought no lowering of teachers' standards, though recruiting teachers has been complicated in part by the extensive adverse treatment given the schools by segregationists.

Special school services such as classes for handicapped children have expanded substantially since 1954, Hansen says, because of "community unification for school improvement."

Racial incidents in the schools are "relatively infrequent," he reports, and behavior problems are usually "those of children, not of Negroes or whites."

Some problems still confront the schools—among them the high drop-out-rate of students when they reach the age of 16. Hansen says these conditions "are not caused by desegregation. It is equally clear that desegregation does not correct them."

FRIEND OF HONEST TAXPAYERS

Mr. BUTLER. Mr. President, the distinguished senior Senator from Delaware [Mr. WILLIAMS] has won for himself an enviable and well-deserved record as a friend of the American taxpayer for his efforts to reduce unnecessary Government expenditures and as a foe of these taxpayers who try to evade and avoid proper income tax payments. A recent editorial in the Washington Daily News commented upon Senator WILLIAMS' unflagging fight to reduce tax delinquency.

I ask unanimous consent to have printed in the RECORD the editorial, entitled "Friend of Honest Taxpayers."

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Washington Daily News, Mar. 31, 1960]

FRIEND OF HONEST TAXPAYERS

Senator JOHN J. WILLIAMS, of Delaware, is hard on taxpayers who don't pay, which makes him a top friend of those who do. Every unpaid tax dollar is an extra dollar out of the pockets of those who do pay.

For 6 years Senator WILLIAMS has been beating the Internal Revenue Service over the head to get busy and collect the tax delinquencies. His only weapon was public exposure. He stood on his legs in the Senate and hollered.

Now he is getting results. In 1954, when the Senator began his one-man show, the total tax delinquency was $1,614,494,000, owed by 1,725,474 delinquents. The other day he was able to report the delinquency after 1959 collections was down to $1,071,-016,000, and the number of delinquents reduced 949,146.

Last year alone the Internal Revenue Service cut the delinquencies by more than 22 percent, by far the best record since Senator WILLIAMS took up his campaign.

The Senator has been especially hard on employers who withheld income and social security taxes from their employees and then didn't fork it over to the Treasury. There was a 17.7-percent reduction in this delinquency last year.

Senator WILLIAMS said it was a pleasure for him to make this report, although he didn't think anyone should be satisfied until more delinquents have paid up.

It is a pleasure for us, too, to loudly applaud Internal Revenue Commissioner Dana Latham (in office only 16 months) and his staff for this impressive record, hoping, meanwhile, that he and IRS will keep shagging those laggards. Even more loudly, we applaud the persistent Senator WILLIAMS, who put on the heat.

THIS, TOO, SHALL PASS AWAY

Mr. BYRD of West Virginia. Mr. President, there is an old Turkish legend that gives comfort to one in time of trial.

A king, who had suffered many years of discouragement, urged his courtiers to devise a motto, short enough to be engraved on a ring, which should be suitable alike in prosperity and in adversity. After many suggestions had been rejected, his daughter offered an emerald bearing the inscription in Arabic, "This, too, will pass."

So, Mr. President, when the days press us with trials and burdens which seem too great to face and too onerous to bear, we may be cheered and strengthened by the poetic lines written to fit the inscription on the oriental jewel of the ancient legend:

Whate'er thou art, where'er thy footsteps stray,
Heed these wise words: This, too, shall pass away.
Oh, jewel sentence from the mine of truth!
What riches it contains for age or youth.

No stately epic, measured and sublime,
So comforts or so counsels for all time
As these few words. Go write them on your heart
And make them of your daily life a part.

Art thou in misery, brother? Then I pray
Be comforted! Thy grief shall pass away.
Art thou elated? Ah, be not too gay;
Temper thy joy. This, too, shall pass away.

Fame, glory, place, and power,
They are but little baubles of the hour.
Thus, be not o'er proud,
Nor yet cast down. Judge thou aright.
When skies are clear, expect the cloud,
In darkness, wait the coming light.
Whatever be thy fate today,
Remember, even this shall pass away!

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

CIVIL RIGHTS ACT OF 1960

The PRESIDING OFFICER. Without objection, the Chair lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (H.R. 8601) to enforce constitutional rights, and for other purposes.

Mr. ERVIN. Mr. President, on behalf of the Senator from Arkansas [Mr. McCLELLAN] and myself I offer the amendment which I send to the desk and ask to have stated.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. On page 16, line 12, change the period to a colon, and insert the following between the colon and the word "Such":

Provided, however, That the Rules of Civil Procedure for the United States district courts shall govern the hearing and determination by the court of any application made under this paragraph to the extent that such rules are not inconsistent with the provisions of this subsection.

Mr. KEATING. I thank the Senator.

Mr. RUSSELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSON of Texas. Mr. President, the Senator from North Carolina desires the yeas and nays on his amendment.

The PRESIDING OFFICER. The yeas and nays are requested. Is there a sufficient second?

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, the amendment to which I address myself is the amendment which was offered last Friday by the able and distinguished senior Senator from Arkansas [Mr. McCLELLAN] and myself. The amendment is very simple in nature and is easily understood. It reads as follows:

On page 16, line 12, change the period to a colon and insert the following between the colon and the word "Such": *"Provided, however,* That the Rules of Civil Procedure for the United States District Courts shall govern the hearing and determination by the court of any application made under this paragraph to the extent that such rules are not inconsistent with the provisions of this subsection."

The amendment is addressed solely to the provisions of the bill which regulate the proceedings before a Federal district judge upon application made to him after the Federal district judge has made an adjudication that discrimination has occurred in the voting district concerned on the basis of race or color, pursuant to a pattern or practice. The amendment relates solely to the portions of the bill which deal with an applicant's claim before the judge, after that adjudication has been made.

As I see it, the amendment is necessary to insure the constitutionality of this particular provision of the bill.

Mr. CASE of South Dakota. Mr. President, will the Senator yield for a question?

Mr. ERVIN. Yes; I yield to the Senator from South Dakota.

Mr. CASE of South Dakota. I notice that the language of the Senator's amendment provides:

That the Rules of Civil Procedure for the U.S. district courts shall govern the hearing and determination by the court of any application made under this paragraph to the extent that such rules are not inconsistent with the provisions of this subsection.

The subsection at the bottom of page 18, beginning in line 23, reads:

The issues of fact and law raised by such exceptions shall be determined by the court, or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures prescribed by the court.

Does that language imply any modification if the action were taken by the referee, or is it to be expected that the court would direct the referee to proceed in all matters the same as the court itself?

Mr. ERVIN. This amendment has no relation whatever to the portion of the bill which the Senator has read. The bill sets up two procedures, alternative in nature, which are to be conducted subsequent to the finding of discrimination on the basis of race or color pursuant to a pattern or practice.

Under the provisions on page 16, applications may be made to the judge of the Federal district court who is authorized to pass on those applications.

The other procedure is followed when the judge appoints voting referees, and the voting referees pass upon the applications.

The provisions just read by the able and distinguished Senator from South Dakota relate to the proceeding where the applications are passed on by a voting referee. This amendment relates to the situation where the applications are passed on by the district judge, as distinguished from a voting referee.

Mr. CASE of South Dakota. That was the point I sought to clarify, because apparently the court could delegate certain responsibilities to the referee, if the due and speedy administration of justice required that, in the judgment of the court.

Then it says they may be referred to the voting referee, to be determined in accordance with the procedures prescribed by the court. So the Senator is saying that his amendment is limited to applications which are considered by the court itself; is that correct?

Mr. ERVIN. That is correct.

Mr. CASE of South Dakota. But that the court might modify those procedures somewhat if in his judgment he had to refer them to the referee. Then the procedures would be those prescribed by the court and the referee; is that correct?

Mr. ERVIN. The bill sets up a procedure to be followed when the applications are passed on by the voting referee. But the bill does not set up any procedure to be followed when the applications are passed on by the judge. And that is the object of this amendment.

Mr. CASE of South Dakota. This subsection does, of course, set forth some procedures. But I was thinking particularly of the language used. Perhaps it does not have the meaning I thought it had. But at the bottom of page 18 and the top of page 19 we find the following:

They may be referred to the voting referee to determine in accordance with the procedures prescribed by the court.

Mr. ERVIN. That makes reference to the situation where the voting referee has filed a report, and the report has been served, together with a notice to show cause, on the attorney general of the State and the appropriate election official of the State; and those words describe what will happen when exceptions are filed. That part of the bill states, as the Senator from South Dakota has pointed out, that the exceptions will be ruled on by the judge, unless the interest of speedy justice requires that they be referred by him to the referee—a provision which, I may add, is a rather singular one, inasmuch as the exceptions which would be filed would state that the voting referee had committed error, either in fact or in law. Under this provision, the judge, instead of passing on that matter himself, could send it back to the referee, and let the referee determine whether he, himself, had made an error of fact or of law. This is a very peculiar provision. I would hate to have to base a case on the proposition that the referee had committed an error of fact or of law, and then have him pass on that matter, himself. I think that would be letting a man pass on the correctness of his own acts, which would be contrary to the spirit, if not the letter, of the principle of sound procedure.

Mr. CASE of South Dakota. Does the Senator from North Carolina have any doubt that the referee would decide that he had decided correctly?

Mr. ERVIN. I think there is no doubt that he would uphold his own decision.

Mr. McCLELLAN. Mr. President, will the Senator from North Carolina yield to me?

Mr. ERVIN. I am delighted to yield to the cosponsor of my amendment.

Mr. McCLELLAN. The language referred to by the Senator from South Dakota applies only after exceptions have been filed, does it not?

Mr. ERVIN. Yes, where exceptions have been filed to the report of the referee in a hearing conducted by the referee, not by the judge.

Mr. McCLELLAN. Yes.

The pending amendment simply states that where this new law and the procedures do not conflict, and where an application is made to the court to have removed the discrimination which the applicant thinks has been imposed against him, the civil procedures shall be followed.

Mr. ERVIN. Yes. It is to make it conform to two provisions of the Constitution. The first is the due-process clause of the fifth amendment; and the second is the third article of the original Constitution, which provides, in effect, that the Federal courts do not have any jurisdiction in anything except cases or controversies. This amendment is to make it clear that the court shall act as a court, not as an executive officer, namely, a registrar of votes; and the amendment is also for the purpose of making it clear that the proceeding is a civil action, not a kangaroo proceeding of some kind.

Mr. McCLELLAN. Mr. President, will the Senator from North Carolina yield further?

Mr. ERVIN. I am delighted to yield.

Mr. McCLELLAN. I recall that both the Senator from North Carolina and I interrogated the Attorney General or his assistant in regard to the advisability of inserting in the bill this amendment or some other provision requiring that the rules of civil procedure be followed. As I recall, the Attorney General or his assistant maintained that the court would be bound to follow those anyway, irrespective of whether this amendment were adopted. Am I correct?

Mr. ERVIN. The Senator is correct. While the Senator from Arkansas was questioning Mr. Charles J. Bloch, one of the greatest lawyers in America, concerning this precise point, the Deputy

Attorney General, Judge Walsh, interposed and said that Mr. Bloch was mistaken in saying that this was not a civil case under article III and under the Federal Rules of Civil Procedure. Judge Walsh said those rules would apply automatically. Here are his exact words, as they appear on page 141 of the hearings:

Mr. WALSH. I say that Mr. Bloch overlooks the fact that the Federal Rules of Civil Procedure apply to the extent that they are not expressly excluded or contradicted by the statute. There is not any doubt, I do not think. We have a fundamental disagreement on that, but we believe that the Federal rules of practice apply, and they require the service on each party of this application.

Mr. McCLELLAN. Mr. President, will the Senator from North Carolina yield further?

Mr. ERVIN. I am delighted to yield further to the cosponsor of the amendment.

Mr. McCLELLAN. Then, if the interpretation by the Attorney General of this proposed legislation is correct, no violence would be done by expressly stating that it is the intent of Congress to have the rules of civil procedure apply. Is that correct?

Mr. ERVIN. That is correct, and that is precisely what this amendment undertakes to do. It says these rules shall apply to the hearing of applications by the judge, to the extent that these rules are not inconsistent with the provisions of this bill.

Mr. McCLELLAN. In other words, in this amendment we seek to do nothing that the office of the Attorney General says is not already assured by the language of the bill.

Mr. ERVIN. That is correct. The Senator from Arkansas and I and Mr. Bloch and many other lawyers disagree with the interpretation made by the Deputy Attorney General; and all we are trying to do is to make certain something which the Attorney General says is already certain.

Mr. McCLELLAN. In other words, we are trying to write his interpretation into the bill, so it will do exactly what the Deputy Attorney General says he expects the bill to do.

Mr. ERVIN. That is precisely what this amendment undertakes to do, and no more.

Mr. McCLELLAN. Mr. President, let me say that this morning I have a meeting of the Subcommittee on Public Works, of the Appropriations Committee; and I have here constituents who are to testify there. I am very much interested in the pending amendment, as a cosponsor of it, with the distinguished Senator from North Carolina. But I feel that I should be present while my constituents are testifying on the appropriation matter.

I wish to express the hope that this amendment will be favorabiy considered, because, as I understand it—and no question about it has been raised—this amendment would do no violence to what is declared to be the intent and purpose and the interpretation of the law or of the proposed act, as made by the Attorney General of the United States. In other words, this amendment would write in this language simply to make sure that the bill will do what apparently all of us want it to do.

Mr. ERVIN. The amendment is simply to remove any possibility of argument about the meaning of the bill in this particular respect.

Mr. McCLELLAN. And about the intent of Congress.

Mr. ERVIN. Yes, and about the intent of Congress.

I am constrained to say that if the Senate does not accept the amendment, it will leave one with the grave suspicion that the reason for rejecting the amendment would be that some prefer darkness to light, and would rather have an area of confusion, than an area of clarity.

Mr. McCLELLAN. It would also, I think, leave this confusion: As the court undertook to ascertain the legislative history of the act, it might leave the impression that the court would perhaps be justified in assuming that the Congress did not intend the rules to apply, when this amendment was offered and rejected. Therefore, if the Senate really wants the rules of civil procedure to be followed, it occurs to me the prudent thing to do is to write this provision into law.

Mr. ERVIN. I think that suggestion of the Senator from Arkansas is undoubtedly sound and wise, because if the Senate rejects this amendment, the Senate will be saying, "We do not intend the judge to be a judge in this proceeding; we intend that he shall act as an executive officer, namely, a registrar of voters, rather than a judicial officer."

Mr. McCLELLAN. I wish to thank the Senator from North Carolina for yielding to me. I wanted to express my views and say for the RECORD I am very happy to cosponsor the amendment, and hope it will be adopted. I must leave. I feel I should attend a meeting of the Appropriations Committee. I wanted to make these observations. I thank the Senator for yielding to me.

Mr. ERVIN. I thank the Senator for his valuable contribution making plain the intent of the amendment.

Mr. KEATING. Mr. President, will the Senator yield?

Mr. ERVIN. Yes; I am delighted to yield to the able and distinguished Senator from New York.

Mr. KEATING. Do I correctly understand it is not the intention of the Senator from North Carolina to include in this amendment provision for a hearing before the referee, but only a hearing before the court itself?

Mr. ERVIN. That is correct. If the Senator will notice, the amendment is proposed to be made on page 16, line 12, of the bill. It is proposed to insert the words of the amendment between the word "law" and the word "Such." It relates solely to the procedure which should prevail where the application is to be passed on by the judge, subsequent to the adjudication of a practice or pattern. In substance, the amendment is virtually couched in the words of Judge Walsh, because it provides that the rules shall apply only to the extent that they are not inconsistent with the provisions of the subsection.

The Senator will notice that the amendment is restricted to the applications made under this paragraph. I refer to the paragraph which begins on the bottom of page 15 of the bill and ends at the end of line 16 on page 16. In other words, it is restricted to applications made under the paragraph, which relates to the actions of the court, as distinguished from the action of the voting referee. But it proceeds further, in the last part, and provides that the rules shall apply only to the extent that they are not inconsistent with the provisions of this subsection. So it will not affect the other provisions of the subsection, as I see it.

Mr. KEATING. If this language does apply to the court and does not apply to the referee, does that not amount to imposing upon the court which is passing officially upon the applications under this title greater limitation than where the proceedings is before the referee?

Mr. ERVIN. It would impose upon the court fewer limitations than are imposed on the court in respect to any other civil case of any kind, because it does not impose on the court the requirement to follow any rule which is inconsistent with the provisions of this proposal; and his burden would be lighter under this language than it would be under the law generally.

Mr. KEATING. But my question is, if a referee is appointed and the referee makes the finding set forth later in the bill, as I understand the amendment of the Senator, this language would not apply to the proceeding before the referee. It would seem, offhand, that the court is having a more rigorous restriction placed upon it in making this finding than is the referee.

Mr. ERVIN. Yes; it would require the judge to hear testimony. It would require the judge to conduct a hearing in open court. But I cannot see any hardship imposed on any judge in such a restriction, and I can see a great hardship imposed upon fundamental constitutional principles if a judge can make a determination otherwise.

Mr. KEATING. Of course, the referee is required to take evidence also, as appears on page 17 of the bill.

Mr. ERVIN. Yes. The judge is required, in the event of exceptions, to pass on what the referee has done. If I were a judge, I would rather pass on the matter in the first place than be bothered with the other proceeding. But if the judge wanted to be bothered with the other proceeding, he could appoint a referee and let him do the first part of it.

Mr. President, as I see it, there are three constitutional provisions which are relevant to this situation. For all practical intents and purposes, this bill is based upon the 15th amendment to the Constitution. I say that is true because the bill applies, according to its phraseology, to any election, of any character, held anywhere in the United States.

Section 1 of the 15th amendment reads:

The right of citizens of the United States to vote shall not be denied or abridged by

the United States or by any State on account of race, color, or previous condition of servitude.

Section 2 of that amendment reads:

The Congress shall have power to enforce this article by appropriate legislation.

There is no procedure whatever established to govern the action of the judge when he himself passes on applications subsequent to the finding of a pattern or practice of discrimination. It would make a mockery of the Constitution for the Congress, while professing to implement the 15th amendment, to adopt a bill which is inconsistent with the due process clause of the 5th amendment, which binds Congress, or with the provisions of the 2d section of the 3d article of the Constitution, defining the judicial power of the United States and the circumstances under which it can be exercised by the Federal courts.

After more than a century and a half of experience, the United States adopted the Rules of Civil Procedure for the U.S. District Courts, and the first of these rules reads:

These rules govern the procedure in the district courts of the United States in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in rule 81.

The exceptions stated in rule 81 are not germane to our discussion here.

That was what we said when we adopted the rules of civil procedure. We stated they should apply to all civil cases, in the Federal district courts regardless of whether they are cases at law or in equity.

It has been held by the courts of the land that whenever a legislative body sets up a new procedure which is not to be administered according to the regular course of legal procedure, it is essential that the act which sets up the new procedure shall make provision which will insure that due process of law will be observed in such a procedure. It cannot be said that the procedure set up by the bill, subsequent to the time of making of the adjudication with reference to the pattern or practice, is to be enforced in the courts according to the regular course of legal procedure, and for that reason it is essential, in my judgment as a lawyer, to the constitutionality of the provisions of this bill authorizing the judge, as distinguished from the voting referee, to pass on applications, for Congress to make some provision which will insure that due process of law will be observed.

The relevant provision of the Constitution with reference to that is found in amendment V, which provides:

No person shall be * * * deprived of life, liberty, or property, without due process of law.

The fifth amendment applies to the Congress of the United States, when the Congress of the United States is exercising the legislative power vested in the United States by the first article of the Constitution.

As to the necessity for making provision for making sure that due process of law shall be observed by the judge when he passes on applications, subsequent to the finding of the pattern or practice, I invite the attention of the Senate to the case of *Coe* v. *Armour Fertilizer Works* (237 U.S.), at pages 424 and 425. I should like to read the statement from that opinion. I shall read it because it is germane to the argument that a judge will necessarily give notice and an opportunity to be heard even when there is no requirement to that effect in the bill. I read this passage from that opinion:

Nor can extra official or casual notice, or a hearing granted as a matter of favor or discretion, be deemed a substantial substitute for the due process of law that the Constitution requires. In *Stuart* v. *Palmer* (74 N.Y. 183, 188), which involved the validity of a statute providing for assessing the expense of a local improvement upon the lands benefited, but without notice to the owner, the court said: "It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunity to be heard." The soundness of this doctrine has repeatedly been recognized by this court. Thus, in *Security Trust Co.* v. *Lexington* (203 U.S. 323, 333), the court by Mr. Justice Peckham, said, with respect to an assessment for back taxes: "If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but the question is, whether any notice is provided for by the statute" (citing the New York case). So, in *Central of Georgia Ry.* v. *Wright* (207 U.S. 127, 138), the court said: "This notice must be provided as an essential part of the statutory provision and not awarded as a mere matter of favor or grace." In *Roller* v. *Holly* (176 U.S. 398, 409), the court declared: "The right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion." And in *Louis. & Nash. R.R.* v. *Stock Yards Co.* (212 U.S. 132, 144), it was said: "The law itself must save the parties' rights, and not leave them to the discretion of the courts as such."

That ends the passage from the Coe case.

Mr. STENNIS and Mr. JAVITS addressed the Chair.

The PRESIDING OFFICER (Mr. SCOTT in the chair). Does the Senator from North Carolina yield, and, if so, to whom?

Mr. ERVIN. I yield to the Senator from Mississippi.

Mr. STENNIS. Mr. President, I should like to ask the Senator a question about the very fine exposition he has read. Is that not settled law? That has been the law all the time, and is not questioned now in any forum, is it?

Mr. ERVIN. The Senator from Mississippi is absolutely correct. That has been the uniform interpretation placed upon the due-process clause both under the 14th amendment, where a State is concerned, and under the 5th amendment, where the United States is concerned. Why anyone would object to spelling out this matter in the bill is something I cannot understand.

Mr. STENNIS. Is it not true that the courts at all levels—State, Federal, and every level—have said over and over again that that is the rule, that anything short of those requirements is simply invalid because it lacks the essentials of due process?

Mr. ERVIN. That is correct, as the decision states very well. If the law creating the new procedure does not provide for the adjudication of the matter according to the usual rules of law governing judicial proceedings, then that law itself has to give a party due process of law, which guarantees to him the right to notice and the right to a hearing, in order to be valid.

Mr. STENNIS. In other words, on that point due process of law means process by law and not by courtesy or some other extended line. It must be in the heart of the procedure itself.

Mr. ERVIN. As the Senator suggests, it must be demandable by the litigant as a matter of right. It is not sufficient to give it to him as a matter of grace or favor.

Mr. STENNIS. Has the Senator heard any real reason given why such practice should not be followed by the Congress? I submit the courts will follow their own rules, anyway, but why should the Congress seek to depart from them?

Mr. ERVIN. The only reason that has been advanced by anyone, so far as I have heard, against incorporating an amendment of this character in the bill was the statement of the Deputy Attorney General, Judge Walsh, who said that he was afraid that if the procedure were spelled out here it might have to be spelled out everywhere. This is obviously not correct, because if the act provides for trial according to the due course of law, the provision is already there by implication. It is only when we create a procedure which is not to be handled by the court as a judicial proceeding, according to the usual course of judicial proceedings, that such a provision is necessary.

Mr. STENNIS. The Senator has well answered the Deputy Attorney General.

Mr. ERVIN. Mr. Walsh made a statement which appears on page 141 of the hearings. Mr. Charles J. Bloch, one of the greatest constitutional lawyers in America, said that the Rules of Civil Procedure did not apply, that there was no provision for notice, and that this could not possibly be a civil case, triable according to the established remedy enforceable in the course of regular legal procedure. He stated that the rules did not apply. Mr. Walsh said:

I say that Mr. Bloch overlooks the fact that the Federal Rules of Civil Practice apply to the extent that they are not expressly excluded or contradicted by the statute.

In other words, what we are trying to do is to put in the bill what Judge Walsh says is already implied in it. We do not agree that it is implied, and we want to make it clear that the court is to act as a judicial body, and not as an executive agency, in connection with these applications.

Mr. STENNIS. If I correctly understand the Senator, Judge Walsh, the able Assistant Attorney General, did not undertake to deny the rule which has been read by the Senator from North Carolina, but agreed to it and said it would have to be followed. Is that correct?

Mr. ERVIN. That is correct—except to the extent of inconsistency between the rules and this bill.

Mr. STENNIS. The Senator has that provision in his amendment, has he not?

Mr. ERVIN. Exactly. In other words, if any provision of this subsection would be inconsistent with the rules, the provisions of the subsection would apply, and not the rules.

Mr. STENNIS. If the courts should undertake to rule that this procedure should not be followed, would they not be compelled to hold the act unconstitutional?

Mr. ERVIN. In my judgment they would be. That is the only misgiving I have about adopting my amendment. It might make an otherwise unconstitutional provision constitutional and enforcible. But I do not wish to see the Congress professing to enforce one provision of the Constitution and at the same time making a mockery of other provisions of the Constitution.

Mr. STENNIS. The Senator has well expressed the issue.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. ERVIN. I am glad to yield to the Senator from New York.

Mr. JAVITS. Will the Senator explain to us why he uses two different references in his amendment? In line 6 he refers to the provision that the rules shall govern any determination of the court on any application "made under this paragraph." Then he goes on—"to the extent that such rules are not inconsistent with the provisions of this subsection."

If what the Senator is trying to do is applicable only to the paragraph, why is there reference to inconsistency with the subsection?

Mr. ERVIN. I am happy to explain the *difference* in the use of those terms.

If the Senator will notice, the paragraph to which I refer in this amendment is found on page 16. The amendment refers to applications "made under this paragraph." Since the amendment applies to line 12 on page 16, the applications referred to are only applications mentioned in the paragraph, which begins in line 20 on page 15, and ends in line 16 on page 16. The provisions found from line 1 on page 16, through line 16 on page 16 refer to applications made to the court, as contradistinguished from applications made to the voting referees. The provisions with respect to voting referees begin in line 7 on page 17.

I refer to applications "made under this paragraph" to make it clear that the only applications this amendment would apply to are applications made to the court, as distinguished from applications to the voting referee. There is a procedure spelled out in the case of the voting referee, but there is no procedure spelled out in the case of the judge. The reason I include reference to "provisions of this subsection" in line 7 is that there are other provisions elsewhere in the subsection with reference to the time within which the court shall act. I wished to make it clear that in any case, any provision anywhere in the subsection which may be inconsistent with the rules shall control, over the rules. That is the reason for the references to two different divisions, one reference being merely to make it certain that it refers only to applications made to the court, as distinguished from the voting referee, and the other reference to make it certain that any other provision of the subsection outside that paragraph which may be in conflict with or inconsistent with the rules, shall govern, over the rules.

Mr. JAVITS. If it is intended only to affect the paragraph, why make the question of inconsistency apply to the whole subsection? Does not that introduce uncertainties in the mind of whoever might seek to interpret the amendment?

Mr. ERVIN. According to my understanding, instead of introducing uncertainties, it makes the situation as clear as the noon day sun. It makes it clear, in the first place, that this amendment refers only to applications mentioned in the paragraph in which it is found, that is, applications handled by the court. It makes it equally certain that any procedure that we set up, that could apply anywhere in the subsection, if it is inconsistent with the rules, shall prevail over the rules.

Mr. JAVITS. I notice that the colloquy which ended with Judge Walsh's observation on the subject discussed by Mr. Bloch appears on pages 140 and 141 of the record. It related to Mr. Bloch's views on the procedure which should guide the official referee. At the end of that discussion Mr. Bloch made the statement to which the Senator has referred:

> As I pointed out, Senator, I think it was before you came in, that in a proceeding before the judge, the attorney general of the State, the board of registrars of the State, nobody is given any notice of this proceeding, not only not an opportunity to be heard and to submit proof, but they are not even served with it. That is what I was discussing before the Senator came in.
>
> Senator CARROLL. What do you say to that, Judge Walsh?

Then follows the statement by Mr. Walsh, which the Senator has read.

Does not that juxtaposition of the subject which the parties were discussing with the answer of Judge Walsh and the answer of Mr. Bloch indicate some connection between the practice which will guide a voting referee and the procedure of the court with respect to voting referees? That is what puzzles me about this amendment.

Mr. ERVIN. Judge Walsh said, in his answer to the Senator from Colorado [Mr. CARROLL] at the bottom of page 141, that he took issue with Mr. Bloch's statement that there would be no notice, and no opportunity to be heard, because there was no provision in the bill for them. Judge Walsh took issue with Mr. Bloch, and said that the Federal Rules of Civil Practice would apply to the extent that they are not expressly excluded or contradicted by the statute.

All my amendment does is to spell out and make it certain that what Judge Walsh said shall be the law, in case the bill is enacted into law.

Mr. JAVITS. I wanted to get my colleague's views on the RECORD. I shall address myself to this subject independently, but I wanted to get my colleague's reasons for his position.

Mr. ERVIN. I am glad to make that statement to the senior Senator from New York.

Mr. KEATING. Mr. President, will the Senator yield to me?

Mr. ERVIN. I yield to the junior Senator from New York.

Mr. KEATING. I should like to address myself to what I feel is perhaps a more fundamental objection to the amendment than the one discussed by Judge Walsh. We have defeated an attempt to make the proceeding before the referee an adversary proceeding. If the court should elect to make these findings, and if the amendment of the Senator from North Carolina were adopted, would that not in effect make the second proceeding before the court, rather than before the referee, in fact an adversary proceeding?

Mr. ERVIN. It would make the proceeding conform to due process of law. I do not know how it is possible to have a lawsuit without having an adversary proceeding. The court has held many times, under section 2 of article 3 of the original Constitution, that a case or controversy implies that there are disputing litigants.

Mr. KEATING. In further explanation of my position I would say that it is the same argument in which the Senator from North Carolina and I found ourselves in difference when the other amendment was before the Senate. I refer to the amendment dealing with the referee section. There is the first adversary proceeding, where the pattern or practice of discrimination is found. Then there is the proceeding before the referee or, if the court chooses, before the court. It is the proceeding following a man's attempt to be registered by the State registrar. Then when the referee, later, makes a report as to these matters there is another adversary proceeding.

The language on page 16 of the bill appears to me to endeavor to make the proceeding before the court—if the court elects to conduct the proceeding—the same as the proceeding before the referee, if the court appoints a referee. After that comes the actual adversary proceeding, in which a full opportunity is given to all the parties to question what has been done before. I wonder if the Senator would comment on that. I believe the Senator and I differ on it, but I wonder whether I have analyzed it correctly.

Mr. ERVIN. It is a question whether, in professing to enforce the 15th amendment, Congress will ignore the 5th amendment and the 3d article of the original Constitution. I do not know how it is possible to have a lawsuit which is noncontroversial. Moreover, I cannot conceive a valid procedure which does not comply with the fifth amendment or with the third article of the Constitution.

Of course, if we wish to convert the Federal court into an executive agency, in violation of the constitutional doctrine of the distribution of governmental

powers, we can do it, but we will have an unconstitutional bill. I cannot conceive why a person should be deprived of his rights of due process of law, by being denied an opportunity to be heard in a case affecting him. When the applications are passed on by the judge, there is no provision for any opportunity for that man to be heard. I do not understand how it is constitutionally possible to convert a Federal district judge into an executive officer. I do not believe we can confer on him Executive power. The only power he can exercise is judicial power.

Mr. KEATING. The Senator from North Carolina has made a number of legal observations with which I would be in complete agreement, in general. I return to my question. Is it the intention of the Senator to assure that the proceeding before the judge, if the judge elects not to appoint a referee—where one man is trying to be registered—will be an adversary proceeding, if his amendment is adopted?

Mr. ERVIN. I am trying to convert the proceeding before the judge into a judicial proceeding which will conform to the due process clause of the fifth amendment. This clause requires that every person shall be given notice and have an opportunity to be heard. Without my amendment I believe we will have the practice which a justice of the peace down in my county followed in his justice of the peace court. A young lawyer was trying a case before the justice of the peace. The young lawyer kept jumping up and saying, "I object, Your Honor; that is not according to the law." The justice of the peace got a little restive, and finally said to the young man, "Do not keep on jumping up and saying 'I object; that it is not according to law.' I will have you to know that I'm running this court. The law hasn't got a damn thing to do with it."

The Senator from New York would have us follow the kind of practice that justice of the peace followed. He would have the Congress deprive a man of the protection of the fifth amendment and ignore the second section of the third article of the original Constitution, which limits the judicial power of the United States to cases and controversies. Moreover, he would ignore the first and second and third articles of the Constitution, which divide the powers of the Federal Government among Congress, the President, and the courts. The Senator from New York would say, in effect, that the Constitution has nothing to do with this bill. I am trying to do something which Judge Walsh said is already in the bill by implication, but I am trying to spell it out, so that relevant constitutional provisions will be observed. In so doing, I am trying to make a bad law less obnoxious to the Constitution.

Mr. KEATING. I do not find anything in Judge Walsh's statement which indicates an admission or concession on his part that there are to be two lawsuits before the same judge, one where the original pattern of discrimination is found, and the second at the time when Mr. X or Mr. Y walks in and tries to register to vote. I do not believe it is the intention of the bill as drawn to provide that there shall be a new trial before the same judge with respect to each one of the individuals who tries to vote; nor do I think that there is any requirement under any due process clause that such be done.

Mr. ERVIN. I cannot agree with everything the Senator has said. However, I can agree with the observation of the Senator that there is no intention in the bill that the State election officials will be given the same constitutional rights that everyone else in the United States is entitled to under the due process clause.

Mr. KEATING. I should not like to have my friend believe that that statement was implicit in my remarks. If he agrees with me as to that, then he is in disagreement with me.

Mr. ERVIN. I do not say that I sense this in the Senator from New York, but I do sense a feeling in a great many people that for some peculiar reason Southern State officials are not entitled to the same constitutional and legal rights to which all other Americans are entitled. Otherwise we would not have a bill like this before us, which absolutely fails to give them the right to due process of law.

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. LAUSCHE. Directing the attention of the Senator from North Carolina to the statement made by Mr. Walsh, which appears on page 144 of the transcript, I read what Judge Walsh said:

> I say that Mr. Bloch overlooks the fact that the Federal Rules of Civil Practice apply to the extent that they are not expressly excluded or contradicted by the statute. There is not any doubt, I do not think. We have a fundamental disagreement on that, but we believe that the Federal Rules of Practice apply, and they require the service on each party of this application.

Is my understanding correct that the bill now before the Senate provides a specific procedure to control when an application is made to a referee, and that it is on page 17 of the bill?

Mr. ERVIN. That is true; it is when the application is passed upon by the voting referee. But no procedure whatever is provided for the case where the application is passed upon by the judge. This amendment simply attempts to do what Judge Walsh says is already implied, namely, that where the application is passed upon by the judge, the Rules of Civil Procedure shall apply to the extent that they are not inconsistent with the provisions of the bill.

Mr. LAUSCHE. On page 17 of the bill the following statement appears:

> In a proceeding before a voting referee, the hearing shall be held in a public office. The referee shall give the county or State registrar 2 days' written notice of the time and place of the hearing and such State or county registrar, or his counsel, shall have the right to appear and to make a transcript of the proceedings.

Mr. ERVIN. The Senate did not think that the State election official or his counsel ought to find out what the lawsuit is about or even to know that a lawsuit has been started. Consequently, the Senate struck out that provision. It was stricken out by the Carroll amendment.

Mr. LAUSCHE. That is, that the referee shall give the county or State registrar 2 days' notice?

Mr. ERVIN. Yes. Apparently the Senate believes the State official and his counsel should be kept in ignorance of the fact that any proceeding is taking place. The Senate struck that out. In so doing, the Senate, in effect, said that the State official is not entitled to be present, even though he is a party to be affected by the lawsuit. For some strange reason, some of the proponents of the bill—not all of them, but some of them—think that the 15th amendment cannot be enforced without throwing away the due process clause of the fifth amendment.

Mr. LAUSCHE. Where in the bill is the language that prescribes the procedure to be followed in governing the applications filed with the referee?

Mr. ERVIN. It was put back in the language which provides that the proceedings before the voting referee shall be ex parte. As the Senator from Ohio knows, "ex parte" means that a case will be heard with only one of the parties to the case being present. The other party has no right to be there, has no right to notice, has no right to cross-examine witnesses, has no right to be represented by counsel, has no right, even, to know that the proceeding is taking place. That is the procedure which was devised for the voting referee; and it is provided, furthermore, that after the voting referee has heard one side of the case only, he is to make his decision based upon what he has heard on that one side of the case only. He does not hear the other side.

Under this procedure, the situation of the defendant is comparable to the unenviable position of the defendant in a certain case before a justice of the peace. When the plaintiff had rested his case, the justice of the peace looked at the defendant and said: "I would appreciate it very much if you would not offer any evidence. When I hear both sides of a case, it tends to confuse me."

That is the situation created by the bill in this instance. It has been decided by the Senate that the voting referee will not be allowed to become confused. To make this certain, the bill provides he is to hear only one side of the case. So the provision that the other side should have notice and an opportunity to be present has been stricken out by the Carroll amendment. The bill now says that the State election officer is not to be permitted to hear or take part in the case before the referee. Only one side of the case will be heard, to keep the referee from becoming confused.

Then the judge will have to pass on the report of the referee, which was decided on the testimony of one side of the case only, the other side having been absolutely barred from the courthouse.

This is the first time I have ever heard anyone who professes any veneration for due process of law advocating a bill which provides, in substance, that the courthouse door shall be nailed shut so

as to bar those on one side of the case from getting into the courthouse, much less to be heard.

Mr. LAUSCHE. Is it not true that under the bill, as at present drawn, at the ex parte hearing the adverse party, if I may so designate him, has a right to make a transcript of what has been said?

Mr. ERVIN. No; that provision has been eliminated, too. What has been substituted for it is that the proceeding shall be ex parte, and the court shall fix a time and place for the proceeding. The procedure which has been devised in respect to the voting referee is one which has never heretofore been advocated by anyone who professes to believe in a fair system of justice. It is certainly incompatible with the rule that any party who may be affected by a judgment shall have notice and an opportunity to be heard, according to due process of law.

Mr. LAUSCHE. Accepting it as a fact that the hearing before the referee shall be on an ex parte basis, except that notice shall be given 2 days beforehand——

Mr. ERVIN. No; that has been stricken, too. No notice whatsoever is to be given. That language was stricken by the Carroll amendment. Unless the State election official to be affected by the judgment hangs around the Federal judge all the time—and that could be difficult, because most Federal judges hold court in five or six different places—he would have no way to find out when and where the referee is to conduct his ex parte hearing.

Mr. LAUSCHE. On page 18, line 8 of the bill, the language reads:

> Upon receipt of such report, the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within ten days, or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report.

Does not that give the election officials and State officials an opportunity to be heard in court?

Mr. ERVIN. Only when the proceeding is brought before the voting referee. But, mind you, the proceeding has already been tried by a voting referee before the State official is given that notice. It has been tried on the evidence of one side of the case only.

Mr. LAUSCHE. Yes; but is not this a notification that after the court has caused the Attorney General to transmit a copy of the report to the adverse parties, they shall have an opportunity then to submit their proof?

Mr. ERVIN. They could come in after the case had been tried in the first instance, in their absence, without notice to them of what the case was about, and without their having the privilege of cross-examining adverse witnesses or offering evidence. They could do it under these circumstances under the voting referee provision. The amendment relates only to the proceeding authorized on page 16, where the application is made to the judge, and is heard by the judge. There is no provision in that instance that the judge shall give notice or afford an opportunity to be heard. In fact, the junior Senator from New York [Mr. KEATING] thought it would be bad to have notice given in that situation, because, he said, there might be some controversy, instead of a peaceful proceeding. I have paraphrased his remarks.

Mr. KEATING. I simply make the comment that it is an overparaphrasation.

Mr. ERVIN. In other words, this amendment applies only to applications passed on by the judge, and merely carries out what Judge Walsh said he thought was already implied. I do not agree with Judge Walsh. Mr. Charles J. Bloch, who was testifying to the contrary before the Judiciary Committee, and who is one of the Nation's greatest constitutional lawyers, also did not agree with Judge Walsh. All this amendment does is to make certain that Judge Walsh's idea of what is implied is incorporated in the bill.

Mr. LAUSCHE. Let me ask the Senator from North Carolina why he has reached the conclusion that the rules governing civil procedure do not apply unless it is specifically stated in the bill that they shall apply?

Mr. ERVIN. I shall state the reason: In the first one of the Rules of Civil Procedure for the U.S. District Courts, we find the following:

> These rules govern the procedure in the U.S. district courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in rule 81.

But rule 81 is not material to this matter. As Mr. Bloch pointed out so well in his testimony before the Judiciary Committee, the only power the Federal courts have is that derived by them from article III of the Constitution, which provides that the Federal judicial power shall extend only to cases and controversies. That provision has been construed many times as applying only to cases and controversies where the law provides a remedy enforceable in the courts according to the regular course of legal procedure.

But the procedure established by the bill is not according to the regular course of legal procedure. The Supreme Court of the United States has held in a multitude of cases—and I placed in the RECORD an extract from one of them—that wherever there is established a procedure which is not to be conducted according to the ordinary course of legal procedure, it is necessary to see to it that the act which establishes that procedure should guarantee to the parties to be affected by it notice and opportunity to be heard according to due process of law. The act creating the new procedure must do this in order to be valid. Even though a party may be given notice and opportunity to be heard as a matter of grace, that is not sufficient; the law creating the procedure has to secure that right to him.

All I am trying to do is make clear that what Judge Walsh says is already so is actually so, so there can be no dispute about it.

Mr. LAUSCHE. I thank the Senator from North Carolina.

Mr. COOPER. Mr. President, will the Senator from North Carolina yield to me?

The PRESIDING OFFICER (Mr. LUSK in the chair). Does the Senator from North Carolina yield to the Senator from Kentucky?

Mr. ERVIN. Yes, I yield to the able and distinguished Senator from Kentucky.

Mr. COOPER. First, I should like to say, as I have previously stated, that I think those who write such civil rights legislation, and who say that due process of law has been denied in the Southern States, should be very certain that the bill itself provides for due process of law.

Mr. ERVIN. Let me say that the Senator from Kentucky has at all times fought to see to it that all basic constitutional provisions are observed.

Mr. COOPER. I should like to suggest that this section does provide for notice and for hearing and for a determination by the court, and it seems to me it does provide due process of law.

I now read from the bill itself: It provides that after a referee has made a finding, the report of the referee shall be made to the court. Then the bill provides that the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding, together with an order to show cause within 10 days or such shorter time as the court may fix why an order of the court should not be entered in accordance with such report.

It seems to me that is a provision that notice shall be given not only to each party, but also to the State attorney general.

Mr. ERVIN. But I say to the Senator from Kentucky that the amendment is not directed to that part of the bill. The amendment is not directed to the hearing before the voting referee, because a procedure is spelled out for a case in which the application is heard by a voting referee. This amendment is directed only to a situation in which the judge himself, as set forth at the top of page 16, passes on the application. There is absolutely no provision anywhere in the bill for any notice to be given to the State election official or to the attorney general of the State in cases in which the judge—as distinguished from the voting referee—passes on an application.

Mr. COOPER. Let me pursue for just a moment the other section—namely, that after notice has been given, there is to be a hearing and there is to be a determination by the court.

Here I differ with my distinguished friend, the Senator from New York. I think these provisions would be applicable to a single applicant, as well as to a group of applicants, and that each applicant or the State or the local election officials, if they thought their rights had been denied in any way, would have the right of appeal under the 1957 act. I think the Senator from North Carolina will agree as to that.

Mr. ERVIN. Yes; but they would not have a right to notice or a hearing. This is an unusual procedure. If the Senator from Kentucky will notice, the bill provides two different ways in

which an application can be passed on. In one, the judge will pass on it, as set forth on page 16; in the other, the referee will pass on it, as set forth on page 17, I believe.

In a case where an application is passed on by a voting referee, a procedure is established by the bill, as the Senator from Kentucky has so well stated. But the bill does not set forth any procedure to guide or govern a judge who passes on applications after the adjudication of a pattern or practice of discrimination has been made.

Mr. COOPER. I turn now to page 15, line 20:

> In any proceeding instituted pursuant to subsection (c) in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a), the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice.

Would not that provision give notice and an opportunity to be heard to all the parties?

Mr. ERVIN. It would give notice and an opportunity to be heard only to those who were parties to the original suit in which the pattern or practice of discrimination was found. Those who make applications to the judge come in afterward. They would not be parties to the original suit. They would not be persons for whose benefit the original suit was brought. If persons are parties to the original suit or those for whose benefit the original suit is brought, then the court in the original suit adjudges their right to vote, and orders their registration under the 1957 act.

But the persons who make applications to the judge are new people who come in for the first time subsequent to the finding of the pattern or practice of discrimination. This is the interpretation which was placed on the measure by the Attorney General and by Judge Walsh and I think that all members of the Senate Judiciary Committee who heard their testimony would agree as to that, namely, that the persons making application to the judge come in subsequently to the adjudication concerning the practice or pattern of discrimination.

Mr. COOPER. I agree. But first there will be a hearing at which the court can make a determination that there have been deprivations of the right, pursuant to a pattern or practice of discrimination. On page 15 it is provided that at such hearing each party will be given notice and an opportunity to be heard. Does the Senator think that satisfies the requirement of due process?

Mr. ERVIN. No, I do not think so. The right of the Federal Government to do anything whatsoever in this field is dependent upon the State's having denied an individual the right to vote—a right possessed by him as a citizen—solely on account of his race or color. I think that is an individual question in every case. Even apart from the matter of notice and a hearing, I doubt the constitutionality of the bill. It undertakes to establish a conclusive presumption which cannot be contradicted for at least a year, respecting the only condition authorizing the Federal Government to take any action whatsoever under the 15th amendment. As a consequence of this conclusive presumption, the State cannot even raise the question of whether there has really been any discrimination on the basis of race or color after the finding of a pattern or practice. Since the court is denied the right to pass on the question of discrimination as to the new applicants and can only pass on the question whether they possess qualifications prescribed by State law, and whether their applications have been rejected, I think the officials are entitled to notice and a hearing on each claim, because each claim is advanced by a new individual.

Mr. COOPER. As I understand the Senator's objection, it goes to that part of subsection (a) of title VI of the proceedings which would follow findings by the court that there was a deprivation of the right in certain areas pursuant to a pattern or practice, because, following that language, it is provided that:

> Any person of such race or color resident within the affected area shall * * * be entitled, upon his application therefor, to an order declaring him qualified to vote.

Is it in that section that the Senator from North Carolina asserts there is no due process provided?

Mr. ERVIN. That is correct. That is the section to which my amendment is directed. I agree with the Senator from Kentucky that up to the time of the finding of a pattern or pratice by the court, there is notice to everybody concerned. But when these new people apply, they bring new matter and new claims into court, and the provision ought to be spelled out that the court will follow the Rules of Civil Procedure insofar as they are not inconsistent with the provisions of this bill,

Mr. COOPER. It would be a civil procedure, of course.

Mr. ERVIN. It should be a judicial proceeding. I am trying to make it certain that Congress is establishing a judicial procedure, instead of attempting to confer on the Federal courts what is essentially an executive function, namely, the registration of voters.

Mr. COOPER. As I understand the Senator from North Carolina, there is one part of the provision which he asserts would not be due process. After there has been a finding of a pattern or practice of discrimination, the Senator believes there should be notice given in the case of applications made by individuals of a certain group.

Mr. ERVIN. That is correct. That is the point. The amendment is directed solely to that point.

Mr. KEATING. Mr. President, will the Senator yield to me on that point?

Mr. ERVIN. Yes.

Mr. KEATING. The Senator's view is correct, in that regard, where a referee is appointed. The Senator contends it is not due process in that case not to make it an adversary proceeding, I take it.

Mr. ERVIN. I think it is not due process where the matter is heard by the judge, because there is no requirement of notice and hearing which are essential under the due process clause. I do not believe Congress can pass a valid law that would deny to one party to litigation the right to offer evidence. This bill contains a provision that evidence shall be taken by the voting referee with respect to a person's literacy and knowledge of other subjects where required by State law; that the decision of both the referee and the court shall be based solely on the applicant's evidence in this respect; and that no evidence by the other party shall be considered. I do not believe that Congress can pass a law and provide that when the Senator sues me his evidence is going to be the only evidence considered on a crucial issue in the case, and that I shall be denied the right to introduce evidence to the contrary. I think that the full hearing to which due process of law entitles every litigant requires that he shall be given the opportunity to present any competent evidence tending to sustain his claim or defense. While a bill which denies a party notice and a hearing may establish a process, it is not due process.

Mr. KEATING. Again, there is much in the generalizations which my friend has made with which I would find myself in complete agreement, but I am trying to pinpoint the objective of the amendment and how it fits in with what we have already done in dealing with the proposal before the Senate. We have defeated the effort to make the hearing before the referee an adversary proceeding. The effect of the amendment of the Senator, as I envision it, would be to make the proceeding before the judge, after he has found a pattern or practice of discrimination, a procedure in which, when each individual tries to register to vote, there will be a full adversary procedure, a lawsuit, with due notice to everybody involved, and a full trial in each and every one of these cases—which is not envisioned by the bill, as I understand it. I am saying this only for the purpose of trying to pinpoint the difference between the Senator's position and my own position.

Mr. ERVIN. I agree with the Senator from New York that that is not envisioned by the provision of the bill to which this amendment is directed. I think that provision of the bill is designed to deny due process of law to a person affected by the bill, namely, the State election official.

I happen to be a person who comes from a State that has a constitution which provides that the courts shall be open. Under such a constitution, no judicial proceeding can be conducted in secret or hidden from the public or the people who are to be affected by the proceeding.

I happen to be one who believes that all cases ought to be tried in open court, and that notice and an opportunity to be heard are basic to any system of justice worthy of the name. That is what my amendment is trying to protect.

Mr. FULBRIGHT. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. FULBRIGHT. I should like to associate myself with the last statement just made by the Senator. I compliment him on his amendment.

There is one other provision in this general subsection about which I should like to ask the Senator. Would his amendment have any effect upon the subsection which appears on page 20, line 18? That language is "the words 'qualified under State law' shall mean," and so forth. That seems to be an unusual provision.

Mr. ERVIN. My amendment would have nothing to do with that particular language. I agree with the Senator from Arkansas in what he has said about it. If the writer of the book of Ecclesiastes had not written, "There is no new thing under the sun," he could not have written it after this provision was proposed. This is the first time I have ever heard it suggested that, instead of the law enacted by a State legislature being applied to determine whether a person is a qualified voter, we shall be governed on that point by the violations of that law by the State official who has been guilty of discrimination, provided those violations are less stringent than the State law enacted by the legislature. It is the first time it has been proposed anywhere, in any legislative body, anywhere on the face of the earth, that a criminal who violates the law of the State automatically amends the law of that State to conform to his criminal act.

Mr. FULBRIGHT. I was wondering how the Senator reconciles that provision with the due process of law which he so eloquently describes in the other section.

Mr. ERVIN. I cannot reconcile it with anything on the face of the earth.

The provision says, in substance, that the laws of the State, enacted by the State legislature, shall be deemed to be amended by the misconduct of one who *violates those* laws, to conform to his violations unless his violations are more stringent than the State laws.

Mr. FULBRIGHT. According to that language, the law of the State in this respect, with regard to qualifications, may vary day by day, each time there is a different degree of violation of the State law; is that correct?

Mr. ERVIN. That is true. Let us consider a State which has a thousand election districts; if a State election official violates the election law of the State in his district, this provision would make such offending official a legislature. There could thus be 1,000 legislatures in session, amending the election law of the State by this violation of these laws. The law would be one thing one day and another thing another day in the same election district. The law would be one thing in one precinct and another thing in another precinct. That is what the language of the provision amounts to.

Mr. FULBRIGHT. I cannot see how that could possibly be applied under any due process of law concept.

Mr. ERVIN. It cannot be. The only authority the Federal Government has to enter into the field of voting in State elections is the 15th amendment. That would be on the basis of State action violating the amendment. What is State action under the 15th amendment has been decided time and time again by the Supreme Court of the United States, and this provision cannot possibly be harmonized with the decisions. It cannot be harmonized with anything in the constitutional or legal fields. This provision provides, in essence, that criminal acts shall amend the law of the State which prohibits those criminal acts. That is what the language provides.

Mr. FULBRIGHT. That is a new concept, and a very original one.

Mr. ERVIN. Yes.

Mr. JOHNSTON of South Carolina. Mr. President, will the Senator yield?

Mr. ERVIN. I yield to the Senator from South Carolina.

Mr. JOHNSTON of South Carolina. I should like to ask the Senator from North Carolina if it is not true that Judge Walsh stated the bill carried along with it the rights the Senator is now offering in the amendment.

Mr. ERVIN. Absolutely. That is stated on page 141.

Mr. JOHNSTON of South Carolina. What harm would there be to incorporating that into the bill in black and white, if that be true?

Mr. ERVIN. For the life of me, I cannot see what harm would be done. I think a bad bill would be made less obnoxious by the incorporation of the amendment into the bill.

Mr. JOHNSTON of South Carolina. Of course, the bill would take away a lot of rights which people have at the present time. Is that not correct?

Mr. ERVIN. A great number. The bill creates an entirely new procedure unlike any now in existence.

Mr. JOHNSTON of South Carolina. This procedure is something new, which I have never heard of before. It says, does it not, that if one is a sinner today, one must be a sinner for a year, and until the court stops one from being a sinner?

Mr. ERVIN. That is correct.

Mr. JOHNSTON of South Carolina. This is the way the language reads: "If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased"—one would have to come back into court again and prove to the court the sinning had stopped, and it would run for a year, anyway.

Mr. ERVIN. It could not be proved within a year.

Mr. JOHNSTON of South Carolina. Nothing could be done about it for a year.

Mr. ERVIN. That is true. If the State election officials fired the offending registrar the next day and put in his place a man who would not discriminate against anybody under any circumstances, still for a year the Federal Government would assume the power to pass on the qualifications of voters in State elections, notwithstanding the fact that discrimination had ceased and notwithstanding the fact that the Federal Government has no power under the 15th amendment to do anything unless there is discrimination. The bill would deny to the State the right to show the truth for at least a year.

As the Senator from South Carolina knows, we are accustomed to seeing justice depicted as a blindfolded lady. This provision of the bill says that justice shall not only be blind, but that justice shall be deaf to the truth for at least a year. If it can be done for 1 year, it can be done for 10 years, and if it can be done for 10 years, it can be done for 50 years. Under this pretext the Federal Government would do something which the 15th amendment says the Federal Government has no power to do; namely, take over the registration of the voters in State elections.

Mr. JOHNSTON of South Carolina. And if the people did not abide by that rule in a State and did not abide by the court order, the Federal court would find them guilty of contempt; is that not correct?

Mr. ERVIN. That is correct.

Mr. JOHNSTON of South Carolina. We have laws in the States which say to the individual, "You cannot do a certain act, and if you do it is a malfeasance." That is a provision of State law.

Mr. ERVIN. The Senator is correct.

Mr. JOHNSTON of South Carolina. If somebody who was guilty of some crime which made him ineligible to become a voter had been registered, the State court would have authority to take action, is that not true?

Mr. ERVIN. Exactly.

Mr. JOHNSTON of South Carolina. Either way a person could be convicted in court.

Mr. ERVIN. Even though a State might try a State election official for violation of the State law and send that official to the penitentiary for his misdeeds, the section of the bill mentioned by the junior Senator from Arkansas provides that the laws of the State would be amended to conform to the criminal acts for which that person was sent to the penitentiary.

Mr. JOHNSTON of South Carolina. When the Federal courts and the State courts both have authority, the man would be convicted one way or another. It would make no difference which way he went.

Mr. ERVIN. The bill is a good illustration of what I have often asserted about the bills which are called civil rights bills. I have never seen one of them, of modern vintage, which was not based upon the theory that the civil rights program cannot be consummated without robbing other Americans of constitutional and legal rights as precious as any civil rights on earth.

Mr. JOHNSTON of South Carolina. In other words, we are here asked to take away the constitutional rights of people under the provisions of the bill, are we not?

Mr. ERVIN. Yes. I would say to the Senator from South Carolina, there is something radically wrong with a bill which says, in effect, "We cannot enforce the 15th amendment without violating the due process clause of the 5th amendment, the provisions of the 3d

article of the Constitution, and the distribution of governmental powers made by the 1st, 2d, and 3d articles of the Constitution."

That is precisely what the bill would do.

I thank the Senator.

Mr. President, I yield the floor.

Mr. FULBRIGHT obtained the floor.

Mr. JAVITS. Mr. President, will the Senator yield at that point so that we may get an idea as to what are the Senator's intentions?

Mr. FULBRIGHT. I yield.

Mr. JAVITS. Is the Senator going to speak on the pending amendment?

Mr. FULBRIGHT. I am going to speak generally on the subject of registrars and referees, but not with specific reference to the pending amendment.

Mr. JAVITS. Would the Senator tell us about how long he will speak?

Mr. FULBRIGHT. I would say about an hour.

Mr. JAVITS. I thank the Senator.

Mr. FULBRIGHT. That will be time enough for the Senator to go to lunch.

Mr. President, I yield to the Senator from South Carolina so that he may make an insertion in the RECORD.

THE RIGHT TO DEMONSTRATE

Mr. JOHNSTON of South Carolina. Mr. President, I wish to bring to the attention of the Senate, the editorial appearing in the April 11, 1960, issue of U. S. News & World Report entitled "The Right To Demonstrate" written by Mr. David Lawrence.

This editorial most outstandingly points out the difference between "mobocracy" and "democracy." In short, as Mr. Lawrence points out in his editorial, "mobocracy" is the condition which is now prevailing in South Africa and which some people have attempted to make prevail in America through illegal sitdown strikes and other violent demonstrations; whereas in a "democracy" we have what is known as the right of peaceful demonstration.

When a mob of people violates the sanctity of private property and attempts to force itself upon unwilling people, then is when "mobocracy" replaces "democracy," and violence supplants peaceful demonstration.

In his editorial Mr. Lawrence says:

The difference between a "mobocracy" and a "democracy"' is that in one there is no rule of law, while in the other there is respect for law and order—a willingness to submit to the wishes of the majority of the people as expressed in a system of representative government.

Mr. Lawrence continues in his editorial to point out the standards of law and order recognized over the world, and goes into the matter of "right to demonstrate." Rightfully, Mr. Lawrence questions the right of a mob of 20,000 to march on a police station in South Africa which contained only 25 policemen, and throw stones and taunt and threaten the local recognized authority. This, as Mr. Lawrence pointed out, is not a "peaceful assembly" but the actions of a "mobocracy."

Then Mr. Lawrence states:

In our own country, the right to demonstrate is likewise being abused. Negroes and whites have a right to gather in peaceful meeting to deplore the separation of the races at lunch counters, but they have no right to create disturbances inside stores which are private property.

Does the National Association for the Advancement of Colored People have the right to urge the public, by telephone call or handbills, to refrain from patronizing certain stores? Secondary boycotts by persons who are not parties to a labor dispute are prohibited by Federal laws that have been upheld by the Supreme Court.

It may be questioned whether marching on police stations or State capitals in big numbers is a wise exercise of the right to demonstrate. Cannot the same points be made and the same publicity obtained by smaller, well-behaved groups? When a large group is formed to march on a particular objective, the danger is that such a group can readily be converted into a mob by encouraging bystanders to join in demonstrations, which too often become lawless.

The Supreme Court of the United States has frequently upheld the right of free speech under our Constitution, but it has also ruled that it is not free speech to cry "fire" in a crowded theater. It is the impact of free speech and the circumstances surrounding otherwise peaceful gatherings which must be carefully considered. Certainly there is no right to form groups that defy the police in their efforts to maintain order, nor any right to invade private property or to conspire to destroy anyone's business if he is obeying the laws of the land.

There is only the right to demonstrate peacefully and with proper respect for the lawful rights of others in the community.

Mr. President, I bring this to the attention of the Senate for several reasons. First, because I think this editorial is a long overdue lesson in realistic and idealistic democracy. There must be a recognition of the difference between mob rule and the right of peaceful demonstration.

I hope the citizens of our country who have previously engaged in "mobocracy" will pay heed to the words of David Lawrence, and I hope those in high positions in and out of our Government who, in the past, have lent their support to "mobocracy" may retrench in their thinking for the welfare of our country.

Mr. President, I ask that the editorial "The Right To Demonstrate," by Mr. David Lawrence, be printed in the body of the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the U.S. News & World Report, Apr. 11, 1960]

THE RIGHT TO DEMONSTRATE

(By David Lawrence)

The difference between a "mobocracy" and a "democracy" is that in one there is no rule of law, while in the other there is respect for law and order—a willingness to submit to the wishes of the majority of the people as expressed in a system of representative government.

To determine what form of government shall prevail is the sovereign right of a community. Where self-government is denied, the right of revolt is recognized as the inalienable privilege of the people.

These are principles that we in America have espoused ever since the days when we rebelled against the tyranny of a king and established our own republic.

The whole world has accepted the doctrine of self-government and self-determination as a basic principle of human conduct, and, when we see it violated as it was in Hungary in 1956 and in Tibet in 1959, free men everywhere express their disapproval and horror. By doing so, we hope to encourage the downtrodden and the oppressed, though we may not feel an obligation to render them assistance by military force.

For a long time, international law has recognized the right of an outside government to demand respect for the lives and property of its citizens and, if necessary, to take forceful measures by military intervention to protect its own citizens.

To what extent, however, may nations express themselves on what appear to be purely internal matters? The United Nations has been debating lately, through the Security Council, the tragic situation in South Africa. The Government of the Union of South Africa objects to such a discussion on the ground that the recent riots are purely an internal matter relating to the preservation of law and order against mobs.

Our own Government has taken the position that, where a controversy exists as to whether an external or internal situation is involved, there should be full debate on that very point. Great Britain, France, and Italy, while expressing regret over the developments in South Africa, appear to regard them as internal.

What is happening, of course, is that 29 Asian and African nations in the United Nations are expressing their "right to demonstrate." This is a proper expression of opinion and a rightful use of moral force. For, unless we are willing to debate in the court of public opinion any issue—including our own behavior—we cannot expect to make progress toward law and order and the establishment of human rights.

But what of the "right to demonstrate" when public officials are challenged? Did the mob of 20,000 which "marched" on the police station in South Africa—containing only 25 policemen—have the right to throw stones and taunt and threaten so that the police grew frightened and opened fire? This was an example not of a "peaceful assembly" but of a "mobocracy."

The net result has been the taking of severe measures of repression and the declaration of a national emergency by the South African Government so as to prevent further tragedies. The acts of lawlessness which have taken the form of burning the identity papers required of all citizens, irrespective of race, are indefensible. They are not in accord with the doctrines of "peaceful demonstration," but are a defiance of law.

In our own country, the "right to demonstrate" is likewise being abused. Negroes and whites have a right to gather in peaceful meetings to deplore the separation of the races at lunch counters, but they have no right to create disturbances inside stores which are private property.

Does the National Association for the Advancement of Colored People have the right to urge the public, by telephone call or handbills, to refrain from patronizing certain stores? "Secondary boycotts" by persons who are not parties to a labor dispute are prohibited by Federal laws that have been upheld by the Supreme Court.

It may be questioned whether marching on police stations or State capitals in big numbers is a wise exercise of the "right to demonstrate." Cannot the same points be made and the same publicity obtained by smaller, well-behaved groups? When a large group is formed to "march" on a particular objective, the danger is that such a group can readily be converted into a mob by encouraging bystanders to join in demonstrations, which too often become lawless.

The Supreme Court of the United States has frequently upheld the right of free speech under our Constitution, but it has also ruled that it is not free speech to cry "Fire!" in a crowded theater. It is the impact of

free speech and the circumstances surrounding otherwise peaceful gatherings which must be carefully considered. Certainly there is no right to form groups that defy the police in their efforts to maintain order, nor any right to invade private property or to conspire to destroy anyone's business if he is obeying the laws of the land.

There is only the right to "demonstrate" peacefully and with proper respect for the lawful rights of others in the community.

Mr. FULBRIGHT. Mr. President, before I make some comments of my own, I wish to pay tribute to the Senator from North Carolina [Mr. ERVIN] because of his discussion today on one of the most important aspects of the bill. I wish to associate myself with his remarks regarding the inherent difficulty which all these bills have encountered when it comes to trying to solve a problem which actually is not solvable by legislative means. That argument has been made on many occasions.

I wish for a few minutes to discuss generally the subject of registrars, which bears directly and indirectly upon the subject of referees. I wish to examine some of the history which should lead us to a sounder judgment on the validity of the approach which is attempted in these provisions.

Historians who have surveyed and examined critically the period from 1865 to 1872 are virtually unanimous in labeling it as one of the darkest and most unhappy eras since the founding of this Nation. These students of U.S. history reflect a concurrence of opinion which is very unusual in academic controversy, when they lay bare the viciousness of the radical Congresses and the baneful effects of the legislation of the Reconstruction period on the future of the South and its relations with other sections of the United States. These unrestrained Congresses which conceived and executed Reconstruction exemplify striking instances of legislative bodies whose programs reflect not the moderate and balanced judgment characteristic of Anglo-American political policy and philosophy but the vindictiveness of those whose need for vengeance dominated the soundness of their logic.

Recalling this historical period from whence sprung most of the sectional differences which plague this Nation today, I regret that a great number of my colleagues, and perhaps even a majority, support legislative proposals which are similar in many respects to those enacted nearly 100 years ago. As an example, I recall that on March 23, 1867, the Congress passed an act specifying that the respective commanders of the five military districts into which the Southern States had been divided, were to "cause a registration to be made of the male citizens of the United States, 21 years of age and upward, resident in each county or parish in the State or States included in his district." Later in September of the same year, Congress elaborated this unique legislation by providing that the commanding generals of each district were to appoint "as many boards of registration as may be necessary—consisting of three loyal officers or other persons—to make and complete the registration; superintend the election and make return to him of the votes, lists of voters, and of the persons elected as delegates by a plurality and make proclamation thereof." Thus, for the first time in our history, voters were to be selected and elections were to be conducted by officials not native to the locality. Procedures completely alien to those traditionally employed at elections in the South were instituted under this legislation.

As might have been predicted, the registrars selected pursuant to this authority were partisan and corrupt in drawing up the voting lists. They gained a reputation throughout the North as well as the South for the imperious and arbitrary manner in which they included and excluded citizens from the rolls of eligible voters. The National Intelligencer, one of the most respected periodicals in this country from the earliest days of the 19th century, printed an article on these bureaucratic party hacks entitled "The Arbitrariness of Petty Officials," in which the registrars were characterized as "the little despots."

In order to secure the dominance of the Republican radicals in the State assemblies and in the State congressional delegations, these registrars disenfranchised around 150,000 southerners who had traditionally been the bulwark of enlightened and moderate government in the Southern States. As a result, the radicals, most of whom were alien to the South and had never lived there until the end of the war, along with the just-freed and almost totally uneducated Negroes, were elevated to positions of power in the States.

Incredible accounts of corruption emerged from the constitutional conventions selected under these federally controlled elections and from the legislatures which grew out of this abortive attempt to restore order to the devastated South. As one example, I recall that less than half of the members of the first State Legislature of South Carolina after the war were literate: One northern newspaperman cited this legislature as an example of "barbarism overwhelming civilization by physical force." Specific documentation of the corruption of this period would only burden the record unnecessarily; it is sufficient to remark that there was a total eclipse of decent democratic government in the South.

The results of this period of Federal intervention in the South were, of course, catastrophic. Not only was there complete prostitution of government in the areas affected but there was also a lower political tone in the Federal Government, as evidenced by the abuses present during the Grant administration. It resulted in a one-party system in the South, a system highly criticized by many political theorists. Above all, it left a legacy of ill feeling and prejudice between the several sections of the country, a difficulty which continues to plague the effectiveness of American democracy even today.

And yet, Mr. President, in spite of the clear historical testimony against Federal intervention in and control of elections, we find ourselves embroiled in controversy over whether or not this country should again resort to the use of federally controlled referees. The parallel between this legislation and that of the last years of the 1860's is as clear as it is disturbing. At a time when we have begun to congratulate ourselves on the demise of sectional prejudices and hatreds which afflict our national life, there are those who would resurrect that very system which gave birth to and nourished the development of these divisive attitudes. This Congress could make no greater mistake than the reopening of the wounds inflicted upon our country by a tragic Civil War. The South accepted the decision imposed upon her by superior force. The young men of the South have fought bravely in two World Wars. The South has made and is making a not inconsiderable contribution to the economic growth of this Nation. I submit that it is high time our northern brothers cease to treat the South as a conquered territory and conquered people.

Mr. President, the issues being raised in this body today are the same as those raised during the congressional debates on repeal of the Reconstruction period election laws. It would be well for every Senator to refer to these debates and study them carefully. The CONGRESSIONAL RECORD for this Congress unfolds a sad story of this Nation's only experience with national election laws. It would seem that the unfortunate results of that period would have taught us an unforgettable lesson. Obviously, this is not so, since here we are again faced with similar proposals for Federal control of the election processes. The future is indeed dark if we cannot learn from our past mistakes.

I expect to bring out some of the points which were made during the controversy on the repeal bill. Then, as now, the question raised bitter arguments and uncovered latent animosities which had been dormant for many years. I think the proponents of the measures now under discussion in the Senate would be enlightened if they would take the time to read the House committee report on the repeal bill. I realize that those who are advocating this legislation do not wish to be enlightened in this direction and I do not expect that many will follow my advice. For this reason, I find it advisable to point out to them some of the information contained in the committee report as well as in the Senate debates on the bill. I would like to read the majority report in its entirety but I shall not burden the RECORD to that extent. I do, however, wish to quote several of the most pertinent paragraphs from the report. The majority states on page 6:

But again, the States for a hundred years and more have provided election laws, appointed officers for their proper execution, and provided the machinery of election. They have prescribed duties for such officers, and have imposed penalties for the failure to discharge these duties. This machinery and these officers, without distinction as to the character of the election, whether it be State or Federal, have the same duties imposed upon them in all essential qualities. With this State of things we find these statutes which are sought to be repealed create officers whose duties it shall be to supervise, scrutinize, and watch every act of the officers of the States. This of itself must

create friction, and the history of the country since the enactment of these laws, has demonstrated their unwisdom in this respect. The power to guard, scrutinize, and inspect implies the power to correct or prevent that which is scrutinized. The power to supervise implies the power to compel the doing or to prevent the doing of the thing which is the subject of supervision. How then can the United States, by its supervisors and deputy marshals, supervise an election under a law which it has not enacted or scrutinize the registration (a condition of suffrage in many of the States) when the right of suffrage emanates from the State itself and the State alone can determine it?

Mr. President, the States still have election laws capable of protecting the right to vote for all citizens. The statement that Federal supervision of State election officials creates friction between the States and the Federal Government is a restrained and temperate comment on the results of such intervention. The minimum effect of such Federal controls would be relegation of State officials to an inferior and dishonorable status. We have sufficient difficulty today attracting qualified people to enter State politics without officially designating them as lackeys of an alien supervisor.

Qualified persons are not likely to offer their services in connection with the election processes when they are faced with harassment by Federal officials. Certainly, one of the end results of passage of the proposal before us would be the lowering of the caliber of State officials, especially those who are connected in any way with the election processes.

The committee majority went on to point out other reasons for repeal of the Reconstruction election laws. On pages 7 and 8 there appears a concise summary of the basic reasons for their desire to wipe those inequitable laws from the statute books, They said:

But we regard these statutes as chiefly inimical to the best interests of the people because they are in effect a vote of lack of confidence in the States of the Union. The inference is irresistible that they were enacted because of a lack of confidence in the honesty if not in the ability of the States to conduct their own elections. With such an intention plainly on their face, with what consideration could they be met by the people for whom they were intended except that of distrust and suspicion? Would the U.S. Government suffer less by the prevalence of fraud in elections than the State whose officers we sent to represent it in the Government of the United States?

Let every trace of the Reconstruction measures be wiped from the statute books; let the States of this great Union understand that the elections are in their own hands, and if there be fraud, coercion, or force used they will be the first to feel it. Responding to a universal sentiment throughout the country for greater purity in elections, many of our States have enacted laws to protect the voter and to purify the ballot. These, under the guidance of State officers, have worked efficiently, satisfactorily, and beneficently; and if these Federal statutes are repealed that sentiment will receive an impetus which, if the cause still exists, will carry such enactments in every State in the Union.

Finally, these statutes should be speedily repealed because they mix State and Federal authority and power in the control and regulation of popular elections, thereby causing jealousy and friction between the two governments; because they have been used and will be used in the future as a part of the machinery of a political party to reward friends and destroy enemies; because under the practical operations of them the personal rights of citizens have been taken from them and justice and freedom denied them; because their enactment shows a distrust of the States, and their inability or indisposition to properly guard the elections, which, if ever true, has now happily passed away; and last, but not least, because their repeal will eliminate the judiciary from the political arena, and restore somewhat, we trust, the confidence of the people in the integrity and impartiality of the Federal tribunals.

These arguments are as valid today as they were 67 years ago. It is obvious that our Nation's only experience with Federal control over the election processes was a complete failure. The old saying that experience is the best teacher does not seem to have any validity for the proponents of the proposal now being discussed in the Senate. I would think that the unworkability and disruptive results of the old election laws would have taught our Nation a lesson which we would never forget. I can only assume that history does not teach some people much, if anything.

I am pleased that a distinguished senator from my State, Senator James Berry, took the lead in the move to repeal these vicious laws. As I pointed out the other day, I occupied the seat in the house of representatives once held by this distinguished statesman. After moving to take up the repeal bill in the senate, Senator Berry made an extremely able speech. I wish to quote a few brief excerpts from his speech, and I urge that those Senators on the floor, who are already convinced of the merits of the pending bill, ponder his remarks carefully. He said:

I propose to advocate the repeal of these laws and the passage of this bill, for the reason that I believe the laws now on the statute book to be vicious in principle and bad in policy, passed for an unjust purpose, and tending in their character to defeat the very object for which it is claimed they were enacted—that is, free and fair elections.

I take it for granted, Mr. President, that each senator upon this floor is anxious to secure honest elections everywhere, and that each ballot cast by the citizen should be honestly counted, and any assumption upon the part of the Republican Party, the Republican press, or Republican Senators that we desire the repeal of these laws in order that fraud may be perpetrated in elections is unwarranted by the facts, unjust to us, and an insult to all honest men. We are American citizens equally interested with you in the preservation of free institutions, and equally anxious to maintain the purity of elections. The only real question at issue is: Can this purity and this fairness be best secured by the general Government or by the several States?

The issues stated by Senator Berry as to whether the Federal Government or the State governments were best qualified to maintain the integrity of the election processes is exactly the issue which confronts the Senate today; granted that extraneous matter has been injected as Senator RUSSELL so ably pointed out. Similarly, the opponents of the legislation now before us are equally interested in the preservation of our free institutions, including voting rights, as are the proponents of the pending legislation.

Senator Berry went on to point out the basic reasons why the supervision of elections is more properly a subject for State control. He said:

In the nature of things it will always follow that the purity of elections can be better secured by officials appointed by the State government than those appointed by the general Government. The election officers of the State are invariably selected from the immediate locality where the elections are held. They are as a rule reputable citizens who have homes and families in the county. They know that any fraud upon their part will inevitably blacken their character and lose them the esteem of their neighbors. They know that all such frauds sooner or later produce ill feeling and tend to destroy the peace and good order of society and threaten the security of their property.

Where the entire responsibility rests upon them local pride will be a strong restraint upon any inclination they may have to falsify the returns. They know that it is absolutely impossible that practices of this character can be carried on to any great extent without detection, and however strong a partisan a man may be, it is only the basest of men who would be willing for their neighbors to know that they had deliberately stuffed a ballot box or falsified a return.

On the other hand, officers appointed by the Federal courts, supervisors, and deputy marshals, do not bear the same responsibility to the local authorities and to the immediate community where the election is held as would judges of elections and deputy sheriffs selected by the authority of the State government. The Federal courts are comparatively few in number, and the presiding judge cannot have an intimate acquaintance and knowledge of men in every portion of the State, and therefore do not have it in their power to make the best selections for these officials. And the same may be said of the marshals of the United States, whose authority extends over many counties, while that of the sheriff is confined to the county in which he resides.

These, it seems to me, are unanswerable reasons why the power to hold and supervise elections for all officials, including Members of Congress, should be conferred upon the States themselves and not the National Government. While these laws which it is now proposed to repeal remain upon the statute book there is something of a divided responsibility and a divided control, which in the very nature of things produce jealousies, suspicion, and antagonisms which are liable at any time to bring about conflicts between the authority of the General Government and that of the State, and which in many instances will tend to defeat the will of the people as expressed at the polls.

Supervisors and deputy marshals appointed by the Federal authority to overlook and direct State officials in the discharge of their duty carries with it a suspicion of the integrity of the State officials, and tends to diminish the causes that induce men to do right for the sake of right, and to destroy that confidence and respect which all good citizens should have toward the officers of both the State and Federal Governments. A man is far more likely to be honest when he will get full credit for his good deeds, than where he is placed under suspicion and supervised by the officers of the General Government.

The point he raised concerning the implication of distrust of State officials exemplified in the then election laws is

uniquely applicable to the present controversy. The philosophy expressed in the proposal now before us is that the officials of the Southern States cannot be trusted. I submit, Mr. President, that Southern officials are no more corrupt or dishonest than officials in any other section of the Nation. The South has no monopoly on disrespect for law and order. And the basic implication of this legislation that this is so does a grave disservice to the millions of law-abiding citizens from those States.

I recall, incidentally, that a great hullabaloo followed my own election, which took place in 1944. A committee composed of a Senator from Rhode Island and a Senator from Michigan went to Arkansas, looked into the election very closely, and found no evidence of corruption. I suppose they were very much disappointed in not finding any.

At this point, Mr. President, I should like to digress to cite examples of what officials in my State accomplished in incidents which have some bearing on the pending issues. Senators will recall the black and blatant headlines carried in the Nation's press when, on Labor Day 1959, the school board offices, the mayor's office, and the automobile of the fire chief of the city of Little Rock were bombed. The account of this violent episode was sent around the world via television, radio, newspapers, and magazines. Subsequent to the bombings the Little Rock Chamber of Commerce offered a $25,000 reward for the apprehension of the bombers. The local law enforcement officers went into action immediately, and within a period of 3 months the perpetrators of these shocking offenses were apprehended, arraigned, tried, found guilty, and sentenced by local juries. Unfortunately, the accounts of the outstanding work of the police, the prosecuting attorney, and the juries did not make as spectacular reading as did the bombings, and one had to search the back pages of the newspapers to follow the progress of this case.

Similarly, on February 9 of this year, when the home of Carlotta Walls, a Negro student attending Central High School, was bombed, the shrieking headlines again appeared in the Nation's press. Again, the Little Rock Chamber of Commerce offered a reward for the apprehension of the bombers, the law enforcement officials went into high gear, and within 10 days the perpetrators were apprehended and charged. In this instance, however, the offenders happened to be members of the same race as the person whose home was bombed, and this, too, apparently was not headline material, for again one had to search the back pages of the Nation's newspapers to learn of the subsequent developments.

Even in that instance, in most of the newspapers one could find nothing about the efficiency of the law-enforcement officials. I know it is not, perhaps, agreeable to our northern friends to be reminded of it, but daily we can find in the press instances of how their law-enforcement officials do not succeed in bringing to justice nearly as rapidly as did the officials of Arkansas the culprits in similar offenses.

Senator Berry, in his presentation of this subject, went on to point out that democratic governments are founded on the principle that people are basically honest and need no coercion to observe the rights and privileges of their fellow men. He said:

> The whole structure of our Government is founded upon the theory that the great body of the people are honest, and if the time should ever come when the people are corrupt then the Government will fall; and if the people of any State cannot be trusted to conduct their own elections then no kind of force used by the General Government will suffice to produce an honest result. The whole history of the Government shows that it is better to trust the people of the States, to permit them to control their own local affairs in their own way. Such was the intention of the framers of the Constitution, and every attempt to turn from their teachings has proven disastrous to our institutions.

As a final comment, the senator reiterated the very basic principle that the South deserves equality of treatment with other sections of the Nation. His pertinent remarks should be heeded by those who would widen the cleavage which already exists between the South and the North. I urge all Senators to ponder these words:

> The people of the South are back in the Union. This is our country as well as your country. We are entitled to the same rights and the same privileges to which all other citizens are entitled; no more, and no less. We have the right to express our views upon public questions without being eternally reminded that there was a time when we were in rebellion against the Government. We believe in this Government now; we are anxious to do all in our power toward its upbuilding, to contribute to its honor and glory; we are ready to stand by it, to protect and defend it at home and abroad under all circumstances and conditions, to speak for it, to work for it, and, if need be, Mr. President, to fight for it.

Mr. President, the South is still in the Union, and we are tired of being singled out for abuse and scorn which I am certain is no more warranted by citizens of the South than by those of other areas.

The South lost the war in 1865. Why are there so many in the North who wish to prolong it? I wonder if it could be for current political advantage.

The distrust of the South and the ability of its officials to assure full rights and privileges for all citizens, regardless of race, is allegedly the primary motivation for the proposal before us, aside from political motives. This was also the reason for the passage of the Federal election laws during the Reconstruction era. The fault with this line of reasoning was well stated by Senator Palmer of Illinois during the 1894 debates when he said:

> I have said already that the mistake when we passed these laws was the failure to trust those who were to be governed. The doctrine I mean to assert as being one necessarily opposed to this legislation is that the laws are based upon a distrust of the people, those for whom governments are ordained and for whom governments should be conducted. That is the radical fault of the laws, and at this moment I present that as a distinct line of objection.

What was the Nation's experience with the Reconstruction election laws as contrasted with the experience before enactment of those laws? Senator Turpie of Indiana pursued this point in the following manner:

> From 1779 up to 1870 we had no Federal election laws. We had no inspection, supervision, or examination. No U.S. marshal and no Federal inspector were ever seen, nor did the Federal Government in any way concern itself with the management and control of the elections in the several States. And I say, sir, and I think it will be borne out by every impartial gentleman who hears me, that, contrasted with the present time and with the time since the adoption of this legislation, that was an age of purity. It was an age of electoral purity. There was less corruption, less bribery, less fraud, less of every kind of electoral irregularity than there has been since the passage of these laws. I recollect—not being very old, either—when we had no law in Indiana against bribery at elections.
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> Sir, we needed none. I question if at that time there was any law in any State west of the Alleghenies against bribery at elections. This multiplication of legislation, this mass and cloud of enactments upon the subject of the purity of the ballot and upon the subject of the conduct of elections, is not an index or a sign of increased purity, increased honesty, increased honor. It is a mark of decadence, and it is a mark of decadence which these electoral laws have themselves made very largely—the great scar, the historical scar planted upon electoral administration in this country.
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> The fraud of 1876 and the lesser frauds which followed it were consummated under the administration of the Federal election laws. No such frauds occurred—they were not, sir, even conceived of—before the passage of these laws. It had not entered into the minds of men to conceive that kind of fraud, that sort of villainy, that description of felony which we now find set forth in the various enactments upon this subject. They have made and created in great part the very evils and crimes which they denounce. Pretended remedial legislation, wrong in itself, always aggravates the evils which it professes to cure.
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> It is true that Senators on the other side talk as if these laws were the only protection of the ballot box. Mr. President, we have made great progress since the age of purity I have spoken of. There is no State now in the Union which does not denounce as a crime all the violations of law prescribed in the Federal enactments, except those personal ones which relate to the obstruction of process or the resistance to an officer necessary for their operation.

I want to repeat one significant statement he made. He said:

> This multiplication of legislation, this mass and cloud of enactments upon the subject of the purity of the ballot and upon the subject of the conduct of elections, is not an index or a sign of increased purity, increased honesty, increased honor.

This statement expresses a profound truth which is as valid today as it was then. We cannot legislate honesty. The enactment of every civil-rights bill before us would not change any person's proclivity toward dishonesty or corruption. The proposals being advanced would be, in effect, sumptuary laws on those which attempt to establish a standard of conduct or regulate personal morals.

Experience has shown that such laws are not a proper subject for legislative action. Our Nation's experience during the prohibition era should prove to the satisfaction of all that this is so.

Senator Palmer also referred to the failure of the election laws, in this manner:

Mr. President, it is remarkable that since this law was passed there has been more corruption and more in the spirit of resistance to this despotic legislation than there ever was before. I know that it is believed by many that the American people in some sense or other need continual nursing and continual watching, and there is an idea somewhere that some person, somebody, may be intrusted with the guardianship of popular liberty, while the essential truth of our American idea is that liberty must be maintained by the people themselves, and the only apology for a despotism or for despotic legislation is that the people can no longer be trusted.

As the debate on the repeal bill proceeded, Senator after Senator rose to condemn the philosophy and practical effects of those laws. Senator Vest, of Missouri summed up the dangers to our form of government from Federal election controls, in this manner:

When you admit that the people of the United States are not intelligent enough, are not patriotic enough to govern their own affairs and to protect their own interests, you abandon the theory upon which this Government is based and declare it an absolute failure. And when you inject into the suffrage of this country, as a part of the controlling and administrative forces of the Government, suffrage which is dangerous through ignorance, you weaken to that extent the doctrine upon which the Government must stand or fall.

Mr. President, whenever we admit that coercion either by National or State Government is necessary to make the people protect themselves we give up popular institutions in this country.

This whole legislation is based upon distrust of the people. It must be assumed that there is here in Washington and in these Halls some mystic, necromantic, and subtle influence that purifies the political atmosphere of the country when it emanates from this great source of wisdom and purity. It is absolutely believed that when we send men clothed with Federal authority amongst our constituents an aroma of patriotism is diffused in the immediate vicinity and throughout the State.

The presumption that the Federal Government is omnipotent in solving any problem which confronts us mentioned by Senator Vest apparently still prevails in this body. The proponents of the pending legislation have assumed that Federal intervention will automatically solve any supposed voting rights problems. As I have already pointed out these proponents failed to recognize that our existing body of law is sufficient to protect the civil rights of all citizens if they would only utilize these existing remedies.

Mr. President, Senators who heard the testimony given this morning before my committee heard quite a severe criticism by some Senators of the administration of the foreign-aid program. If all Senators had heard that criticism, they would not be so certain that Federal laws with respect to the electoral process would necessarily bring about any improvement in it. It is curious that in our Government it is assumed that, with respect to any activity, if we only inject the Federal Government into it, all in that field will be done properly, smoothly, and honestly. However, when we examine programs which already are under the Federal Government, we find a completely different attitude on the part of many Members of this body, many of whom now strongly advocate the enactment of this proposed legislation to inject Federal power and procedure into the election processes in the Southern States.

Another argument advanced during the repeal debates was that the election laws were bad because they introduced the judiciary into political affairs—which certainly is one of the evils of the proposal now before us. Senator Daniel of Virginia had this to say on that point:

Mr. President, there is another reason why this law should be repealed. It introduces the judiciary of this country into its political affairs. In my judgment the judiciary should be as separate from the political elements of the Government as possible. We should do everything to segregate the judge from the transient current of political agitation and ambition. This law interjects him into it nolens volens. It stimulates and inspires partisanship in the very spot where partisanship is the greatest evil.

Mr. President, what wisdom some of our forebears had, compared to the present. I should call the attention of the present Supreme Court to that very wise statement by Senator Daniel of Virginia, delivered in this body some years ago. The injection of partisanship into the deliberations and decisions of the Supreme Court is one of the greatest evils that has befallen our country.

The analogy between this point and the operation of the Attorney General's referee proposal is so striking as not to need further comment.

Senator Turpie also discussed the effects of court intervention into the election processes in this manner:

A respect for law is always closely connected with the courts that administer it, and with the officers of the courts, the judges who have charge of that administration. A very large proportion of that decadence in respect for the law, for the administration of justice, and for the judges of the courts, especially in the Federal judiciary, is due to enactment, in the first place, and the existence and administration since, of what are known as the Federal election laws, the repeal of which is the object of the bill now pending.

I do not know anything better calculated to degrade the courts, to lower the character of judges and to shake the confidence of the people in the administration of justice than to connect the judges and the courts closely with those animated contests, not always pure, not always honest, not always of the most scrupulous character, which political parties make as a part of the necessity of a free government in the various States and communities where they exist.

I urge all Senators to carefully consider the sound logic of Senator Turpie's statement. The practical effect of the referee plan would certainly tend to bring about the result described by this distinguished Senator. One of the most pertinent speeches made during that debate was by Senator Bate, of Tennessee. His comments indicated a unique understanding of problems of the South which could only be held by one who had lived in the region. His remarks on the sources for a real solution to the problem are valid today. I quote from his speech for the information of the Senate:

Leave the races to the creative influences of industry, mutual dependence, and social contact to correct the political evils. Education has done much and will do more to set matters right. It is social, moral, and political development that is demanded, not the interposition of Federal agents, that only act as dangerous irritants. They can but stimulate the most dangerous feelings between the races under their present relations. It is not so much the abstract power of Congress as the personal authoritative presence of officials.

It is admitted that under the 14th and 15th amendments, there is ample authority to protect the rights, privileges, and immunities of any citizen; and under the 13th article of amendments, the Negro race may be fully guarded by Federal laws, so far as race, color, or previous conditions of servitude are involved.

It is the persistent efforts upon the part of those who do not live in the same locality of the Negro, and know practically but little or nothing of his capacity, tastes, and habits, that keep up political agitation which brings no good to him and no peace to the society in which he lives. This question is an old sore; it is healing under the influence of natural and social causes. Do not "tear agape the healing wound afresh," but let the balm of time soothe and cure.

Mr. President, the distinguished former Governor Battle, of Virginia, who served as a member of the Civil Rights Commission, testified before the Senate Rules Committee on the question before us. His testimony points out the striking similarity between the pending measures and the old Federal election laws. No one can criticize Governor Battle's sincerity or integrity on the question of voting rights. His great understanding of the peculiar problems involved in this field, due to his southern background and his experience as a member of the Commission, provides him with unique qualifications to discuss this subject. Governor Battle said of the administration's referee plan that the:

bill is nothing more nor less than refinement of the old act of 1870, as amended, described as the Enforcement Act and generally known as the force bill of Reconstruction days.

It resurrects the specter of Reconstruction which those of us who live in the southern portion of our reunited country had hoped and believed had been forever buried. The force bill, which was so obnoxious, was, in 1894, repealed by the Congress by an act which sets out the various code citations of the Enforcement Act, and not being satisfied with that, concludes—the author of this act seems to have been very anxious that he wipe out the whole works, for he concludes: "All statutes and parts of statutes relating in any manner to supervisors of election and special deputy marshals be and the same are hereby repealed"

The bill of 1870 provides for supervisors of election. The Attorney General's bill, in an effort apparently to make it more palatable, provides for voting referees, but their powers and duties are substantially the same.

I want to emphasize the language which he quoted from the repeal bill evidencing the intent of Congress that all provisions relating to supervisors of elections and special deputy marshals

were to be repealed—not just those sections specifically mentioned in the repeal bill. This clearly indicates the intent of Congress to remove the Federal Government from any type of direct supervision of elections. In my opinion, the events in the last 66 years have not disputed the wisdom of that action.

As I mentioned in my speech on Tuesday, March 1, 1960, Governor Battle took the position, in his dissent to the Commission's report last year, that existing law was adequate to protect voting rights for all citizens. I certainly agree with his position, and I again refer to the citations to the laws on this subject which I discussed in that speech. In his testimony before the Rules and Administration Committee, Governor Battle reiterated the position which he took in the Commission's report, and I quote from his statement for the information of the Senate:

In my judgment, Mr. Chairman, the present laws are ample to take care of the situation as revealed in the report of the Civil Rights Commission.

I do not for one moment condone conditions such as were recited in the report of the Commission on Civil Rights, but I believe the remedies proposed are worse than the malady, and I am further of the opinion that there is ample legislation already enacted which, if properly invoked, would correct the conditions complained of. I would refer in this connection to, first, 18 U.S.C.A. 242, which makes it a crime for State election officials willfully to deprive any qualified person of the right to register, vote, or have his vote counted as cast.

Second, to 42 U.S.C.A. 1983, 1985, and 1988, which vests in each citizen the right to sue State election officials for damages or for preventive relief if he is actually denied or threatened with denial of his right to register, to vote, or to have his vote counted as cast.

Third, under the Civil Rights Act of 1957, now 42 U.S.C.A. 1971, the Attorney General may sue State election officials to prevent any qualified citizen from being denied his right to register or vote.

I, too, cannot condone deprivation of anyone's constitutional rights regardless of race. I cannot conceive that the conditions alleged by the Civil Rights Commission would continue to exist if the Attorney General would enforce the laws on the statute books and individuals would avail themselves of the remedies now in existence. I think it would be pertinent at this point to refer to statements made by former Attorney General Brownell before the House and Senate Judiciary Committees during consideration of civil rights legislation in 1957. In his statement before the House Committee Brownell had this to say about civil remedies available to individuals who have been deprived of their constitutional rights:

In the civil rights field itself, we have numerous statutes which authorize private persons to seek civil remedies. As a matter of fact, most of the large body of judicial precedent and decision which has been built up in the courts defining the constitutionally protected rights has been handed down in these private civil cases.

I wish to remind the Senate that this statement was made before the 1957 law, authorizing the Federal Government to intervene to protect voting rights, was enacted. Brownell went on to comment on the criminal statutes pertaining to protection of voting rights in this manner:

Yet at the present time criminal sanctions are the only remedy specifically authorized by the Congress.

I think it is quite obvious to you that in addition to the unnecessary difficulties that they impose upon the Government, they are often unduly harsh in particular situations. Nevertheless, under the present law we have no alternative but to proceed with criminal prosecution.

In the hearings before the Senate Judiciary Committee, Brownell again mentioned his concern about the harshness of the criminal laws for protection of voting rights. He said:

Furthermore, I think it is fair to point out that criminal prosecutions are often unduly harsh in this peculiar field where the violators may be respected local officials. What is needed, and what the legislation sponsored by the administration would authorize, is to lodge power in the Department of Justice to proceed in civil suits in which the problem can often be solved in advance of the election and without the necessity of imposing upon any official the stigma of criminal prosecution.

As a result of the Attorney General's recommendations the 1957 act was passed giving civil remedies. Obviously additional remedies are not now needed—all that is needed is enforcement of existing laws.

Mr. President, it is obvious to anyone who has studied the debates on repeal of the Reconstruction election laws that they were a failure, and a blot on the history of the election processes of this Nation. It is a backward step that a serious attempt is being made to revive the animosities and conflicts which were created by that law. The reenactment of Federal controls over elections will be a terrible price to pay for supposed political advantage. The South is an area of great potential development. It has and can continue to make a great contribution to the strength of this Nation if it is treated with reasonable respect and consideration.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ELLENDER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STENNIS. Mr. President, my purpose is to informally address the Senate quite briefly with reference to the merits of the pending amendment, the Ervin amendment, which has to do with the requirement that the Rules of Civil Procedure for U.S. District Courts shall govern with reference to the hearings on any applications before the court after the so-called pattern or practice has been found and adjudicated by the court.

The Ervin amendment reads as follows:

On page 16, line 12, change the period to a colon and insert the following between the colon and the word "Such": *"Provided, however,* That the Rules of Civil Procedure for the United States District Courts shall govern the hearing and determination by the court of any application made under this paragraph to the extent that such rules are not inconsistent with the provisions of this subsection."

Mr. President, I do not know to what extent it is realized that under the terms of the pending bill another lawsuit is set up. That lawsuit is merely tried under the canopy of the original proceeding and under the protection of a mythical pattern or practice.

In the first place, it is a long, long call from the concept of the Senator from Mississippi, that a Federal district court, a court of unlimited jurisdiction, a court of dignity and responsibility, should be converted into a registration board or a supervisor of elections or a supervisor of registration in the manner this bill proposes.

I should like to inquire, from what quarter comes this concept of creating a pattern or practice area, and requiring the court to take up an extraordinary duty and a new procedure?

What place does that have in a Federal district court?

It is more like a finding of an sanitary district that a certain area of a city is infested, or of a military board that an area has some unexploded bombs in it, or of a board or commission on health finding that a certain area of a county is infected with certain germs or viruses. It is not in keeping with a court's function to be running various areas of a county or State through the election processes of registering voters and carrying on in such a fashion as is proposed, more particularly since the pending bill does not even require that the rules of civil procedure as prescribed by the courts be followed. That in itself is an admission on its face, it seems to me, that it is not really intended to be a judicial function. It seems clear to me that the bill does not intend that these cases shall represent a judicial function, as laid down in article III, sections 1 and 2 of the Constitution of the United States, which is the only source of judicial power of the Federal judiciary.

I do not believe that Congress has any authority to bestow any other power on the court except judicial power.

Where does the idea come from in the first place of converting the courts into a governmental body of some kind, such as a sanitary district? In the first place, who is going to represent the man who comes in from this pattern area? Will he be represented by the Attorney General? The bill does not so state. That is not clear. He comes in with a halo over his head, according to the procedure outlined in the bill, with presumptions in his favor, because he is from the area.

He walks into what has been a court. I say the bill would convert the court into a judicial commission, or a commission of some kind. All he has to say is that he has been found not qualified to vote. There is no provision for any adversary party in this litigation. There is not any party defendant provided for.

This is purely an executive proceeding by nature, but not by name. The proceeding is held before a judicial officer, that is true, but certainly he is not exercising judicial functions unless we require the rules of civil procedure to apply, with the parties being given notice and an opportunity to be heard.

As the Senator from North Carolina [Mr. ERVIN] has so clearly pointed out this morning, it is not a question of what one judge may do by giving the other parties notice, or refusing to proceed until notice has been given and a hearing set. That is not the question at all. We are legislators. We have certain limited powers. If we are to set up this procedure, the only authority we have to exercise is the constitutional authority, and it is mandatory that in a proceeding of this kind the rules of civil procedure must apply as a matter of law; not that the judge will apply them as a matter of courtesy. It must be written into the face of the law that these requirements shall be met. Anything less than that, I respectfully submit, is a bill which does not comply with the fundamental and elemental principles of due process of law.

So I raise the question: What is the nature of the proceeding under which an applicant comes in from the pattern or practice area? I wish the Presiding Officer of the Senate [Mr. LUSK], if he has a chance to do so, would study this particular part of the bill and say what he thinks about this proceeding. Is it a lawsuit? Is it a determination of judicial facts? Is a district court of the United States converted into a mere board of registrars?

If we do not write into the bill the provision for the application of the rules of civil procedure there is no doubt that the court will be converted into a board of supervisors, or a board of overseers, or a board of corrections of some kind with reference to a function pertaining to voting and qualifications of electors.

It is elemental and fundamental that if this is going to be called a judicial proceeding, with a judicial finding, we must make the proceeding conform to the ordinary rules of elemental due processes of law. I am not referring now to the case which is brought by the Attorney General originally. I am not referring to all the mass of things that can happen under the so-called referee proposal. I am directing my attention to the "party or parties," covered at the top of page 16, beginning at line 2, who may come to one court or many courts with this halo over their heads from this so-called protected area.

Furthermore, with reference to the requirements for the hearing and the disposition of the application—that is what the bill calls it—the provision at the top of page 17 states that the court shall hear this matter within 10 days.

It is most extraordinary to write into a bill a provision that a Federal district court shall hear a matter within the short span of 10 days. That emphasizes another point: that such a proceeding is highly irregular. It will not really have the dignity of a judicial proceeding unless we adopt at least the Ervin amendment to require the Federal Rules of Civil Procedure to be followed.

Mr. ERVIN. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I am glad to yield to the Senator from North Carolina. I am glad he is on the floor.

Mr. ERVIN. I ask the Senator from Mississippi if the courts have not held in many cases that the constitutional right of a person to be represented by counsel of his own choosing requires that his counsel be given an adequate opportunity to prepare the case for trial; and when counsel has been denied an adequate opportunity to prepare the case for trial, has not that been held by the courts, time and again, to be the denial of due process?

Mr. STENNIS. It is reversible error on those facts. As the Senator says, that goes to the basic principle of the denial of due process of law.

Mr. ERVIN. The Senator from Mississippi has had a most distinguished career as a trial lawyer and a trial jurist.

Mr. STENNIS. The Senator from North Carolina is too generous. I have simply had slight experience in that field.

Mr. ERVIN. Does not the Senator from Mississippi, based upon his experience, believe that a period which cannot be more than 10 days, and which may be shortened to less than 10 days, is not adequate time for counsel to prepare a serious controversy for trial?

Mr. STENNIS. Ten days in a matter of any consequence at all is not considered long enough for a person to obtain counsel, a lawyer of ability, to get a copy of the proceedings or a history of the case, to read the pleadings, and then to prepare and file a preliminary showing or motion, much less go to trial.

Mr. ERVIN. Mr. President, will the Senator yield for one or two other questions?

Mr. STENNIS. I am glad to yield to the Senator from North Carolina.

Mr. ERVIN. The pending amendment provides, among other things, that the Federal Rules of Civil Procedure, which apply to all litigants in civil cases in the Federal courts, shall apply to a proceeding before a judge when he passes on these applications. I call the Senator's attention to rule 43, which provides:

> In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules.

Does the Senator from Mississippi believe that anyone can justify the refusal to take the testimony of witnesses in open court pursuant to that rule?

Mr. STENNIS. There is no conceivable reason. The rule of law requiring confrontation and cross-examination is so elemental that the question should not be argued.

Mr. ERVIN. Does the Senator from Mississippi agree with me that basic fair play as well as due process requires the observance of that rule?

Mr. STENNIS. Of course. Anything less than that would indicate that someone is seeking an advantage.

Mr. ERVIN. Does not the Senator believe that a grave suspicion is cast upon the administration of justice when it is proposed that the testimony of witnesses shall be taken in secret, in the absence of the party to be affected by the judgment to be based on such testimony?

Mr. STENNIS. It is simply not a judicial proceeding. It is a reflection on a judicial tribunal to call upon it to perform in any such way. That is another reason why I believe the bill is invalid and unconstitutional.

Mr. ERVIN. I call the Senator's attention to Rule 77–B, which provides:

> All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room.

Does not the Senator believe that to try all cases in open court and in a regular court room, so far as possible, is the absolute minimum requirement, if persons are to have confidence in those to whom the administration of justice is committed?

Mr. STENNIS. The Senator is correct. It is written into the basic law of the State constitutions that that will be the procedure, except if a judge, in his wise discretion, for some special reason, should order a closed session.

Mr. ERVIN. The rules from which I have been reading apply to every person and every corporation which has litigation in a Federal court in any of the 50 States or in the possessions of the United States. Can the Senator from Mississippi find any justification for saying that all Americans, of all races, shall have the benefit of these rules in all cases, of all kinds, in all the Federal courts of the Nation, except southern State officials?

Mr. STENNIS. There is no conceivable reason or basis to warrant any such conclusion, and particularly in this instance to solemnly legislate it into the law of the land.

I believe the Senator from North Carolina has rendered a great service. It is a service which seems to be overlooked somewhat. He has rendered a great service in pointing out—and I hope he will continue to point them out—the very provisions by which we are operating, which are so elemental.

Mr. ERVIN. Does not the Senator from Mississippi agree with me in the view that any system of justice which is worthy of bearing the name of justice shall have a system of laws which applies equally to all men in like circumstances?

Mr. STENNIS. Of course. That is the basis for any fundamental approach to the application of justice.

Mr. ERVIN. Does not the Senator agree with me that the bill is an effort to govern one group of people—namely, the southern State and local officials—by laws which apply to no other Americans under any circumstances, anywhere in the Nation?

Mr. STENNIS. Some of the provisions of the bill which started out that way have been removed or have been amended by the Senate; but the one which the Senator seeks to amend remains as one of those which is directed as the Senator suggests.

Mr. ERVIN. I thank the Senator from Mississippi.

Mr. STENNIS. I thank the Senator from North Carolina for his contribution to the discussion.

Mr. President, I have no long debate; no prepared or written remarks. I am concerned about the fundamental points involved, the basic principles of American liberty. As one who carried the responsibilities of a trial judge for a good number of years, I am shocked that the Senate of the United States should seriously consider passing a bill under which a Federal judge will be called upon, in solemn mockery, I say, to pass upon, adjudicate, and decide cases mandatorily under a 10-day shotgun provision which is pressed on him.

In the second place, there will be no notice given to any adverse party. No chance will be afforded him to be heard. There is nothing except a bare, naked provision about what the procedure shall be, and then the provision that the court—the judge—shall, within 10 days, proceed. There is a further provision—I think it applies in this instance—that the ballots will be counted anyway. Relatively speaking, I think that part is incidental. I shall not become disturbed because someone votes who may not be qualified, or because those who are qualified cannot vote at some particular election.

In a nation having a population of 180 million, things like that will happen with reference to elections and with respect to voting rights.

What I am concerned with, not only in this bill but in others, is our failure to look to the origin of our power—the Constitution of the United States—to see if there is authority in such a provision to come within the exercise of the ordinary rules of caution and the regular rules of practice. In our zeal to "get to a fire" somewhere, we abandon all reason, all wisdom, all experience, all the practice which has been built up over the decades, even over the centuries, and which has been written into our basic law and used over and over thousands, yes, hundreds of thousands, of times, doing all those things to convert our courts, the judicial branch of the Government, which is the most important of all three branches, into the mere category of a commission or a sanitary board or an election board to be running registrations and supervising elections and carrying on, not in Federal affairs alone, but in all affairs—Federal, city, village, town, and State. Someone naturally would think that I might be aroused because of the general subject matter of the bill. But that is not the point. Mr. President, here we are dealing with fundamentals and principles, and we are running past a great many red lights; and such action will plague us in connection with many other subjects in many, many days to come.

So I most earnestly call especial attention to the Ervin amendment, and the splendid argument the Senator from North Carolina made this morning in its behalf, and the quotations from the Supreme Court of the United States, right down the line, which will not be answered because they cannot be answered. We should also be warned by the experience of the decades and the warnings written into our law.

So let us either strike out the provisions for this hybrid proceeding about the mythical man who will come in with a halo over his head and will demand that a Federal judge stop all other business and give him an order within 10 days, or else make the provision conform not only to the fundamental, elemental principles of justice, but also to the constitutional judicial procedure.

Mr. President, I yield the floor.

Mr. JAVITS. Mr. President, I should like to discuss this amendment briefly.

I am opposed to the amendment. My reasons for being opposed to it can be summarized as follows:

At worst, this amendment is an attempt to enter by the back door, whereas the rejection of the Kefauver amendment shut the front door; and this amendment is an effort to make an adversary proceeding out of what the Senate has decided should not be an adversary proceeding.

At best, the amendment would add something unnecessary to the bill, and would encourage litigation and, therefore, would further bedevil the bill, which at the present time does not do too much about civil rights, or, indeed, does not do too much about voting.

Now let me enlarge upon those points:

First and foremost, everyone agrees, it seems to me, upon at least one thing—namely, there is to be a proceeding, especially as it exists in court. It is to be a civil proceeding, and the rules are very clear in regard to the applicability of the Rules of Civil Procedure to a civil proceeding. The distinguished Senator from North Carolina, the author of this amendment, has already read rule 1, as follows:

> These rules govern the procedure in the U.S. district courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exception stated in rule 81.

And I believe both of us agree that rule 81 does not at all affect this situation; that rule deals with a number of special matters which are not here in question.

Therefore, if the rules of civil procedure will apply to this situation in court, why include this amendment in the bill, unless the amendment has some purpose or unless it will be productive of litigation.

I believe we begin to perceive the purpose of the amendment when we analyze the legislative scheme here involved, and then apply it to the provisions of this amendment.

The legislative scheme breaks down into two proceedings as to subject matter, to wit, the proposal brought to us by the Judiciary Committee, which for most practical purposes is the same as the one voted by the House of Representatives. It deals with the following: First, there is a litigation under the Civil Rights Act of 1957. Let us not forget that. That act gives the Attorney General authority to institute suits in order to establish voting rights, where voting rights are being denied or where a person who is entitled to them is being deprived of them. Why do we need any legislation in that connection? We need legislation because we find that the wrong is that voting rights are often denied in the mass, by virtue of a pattern or practice of denial of voting rights in a particular community. That is what the Federal Civil Rights Commission found.

So the first proceeding which we shall newly authorize, and which is not now authorized by the 1957 Act, is one by which a court will make a decree that a pattern or practice of denial of voting rights to those who have qualified to receive them exists within a given area. The two things the court will have found under those circumstances are, first, the pattern or practice; and, second, the area in which the pattern or practice is located. That is legal proceeding No. 1. There is no question about the fact that that will be an adversary proceeding, and that all the rules of civil procedure will apply to that proceeding. Indeed, the provision to be found at the foot of page 15 provides that the court shall, upon the request of the Attorney General, and after that party has been given notice and the opportunity to be heard, make a finding, and so forth.

In short, it will be a proceeding in which the State itself—not just an individual party or a registrar—will be an adverse party, I assume; and certainly the provision contemplates that. It would go to a regular adversary trial. There could be many witnesses, and there could be appeals. We have the Raines case—decided only a month or so ago—which went to the Supreme Court of the United States; and other cases are pending in the Supreme Court of the United States. In short, before a pattern or practice is found, there will have been a completely adversary proceeding.

What the author of this amendment would have us believe is that if we do not have an adversary proceeding at every stage of the proceedings—and I emphasize "at every stage of the proceedings"—there will not be due process of law. But that is not a fact, and it is not the law. The courts have held many, many times that due process of law depends on the kind of proceeding being engaged in. Ex parte orders may be made. Indeed, in this very part of the bill there is provision for ex parte orders. Other interlocutory proceedings might be engaged in, and there could be serious punishment for contempt, without jury trials. The courts have sustained that time and time again. In short, what is or is not due process of law and what is an adversary proceeding are two very different things.

So we have one thing clearly nailed down; namely, that in the first stage, before there is a finding of a pattern or practice of denial of voting rights, there will be a completely adversary proceeding, subject to all the rules of civil procedure. When that finding has been entered, then someone will have been found wrong. In that instance the State will have been found to be denying, through

its officers, a constitutional right. It is a fundamental rule of law that when a wrong has been found to exist and when the court comes to afford a remedy for that wrong, the court may proceed upon the assumption that the facts which underlay the finding continue to be present, until there is some reason to say that they do not. And there is always the right of one who has been a party to the original proceeding to come in and move to dissolve any order, upon a showing that there is no pattern or practice.

A great deal of the debate about this matter assumes that no one will have the right to come into court. However, the attorney general of the State—and in these cases the attorneys general of the States are always on the other side; the very provision contemplates that—will have the right to come in at any time and move to vacate the order, on the ground that there is no pattern or practice, that everyone is being registered, that the community has learned its lesson, and that that is the end of all that. And that can be taken up on appeal as far as anyone may wish to take it.

I pointed it out in some detail in order to make very, very clear the area which we are discussing, that is, the difference between the proceeding to establish a pattern or practice and what ensues.

Having found that the community is engaged in the denial of a fundamental constitutional right which is elementary, the Congress, in action to be implemented by the courts, has devised a legislative plan which will enable people to get what the community has denied them.

We carry out that legislative plan, according to this provision, in two ways. We now come to the amendment of my colleague from North Carolina. One way is by appointment of an official referee. The other way is by the action of the court itself. It is in that part of the latter proceeding that there is danger. I do not say I know it beyond question and with certitude, but from what we have been able to discover in the course of interrogating the Senator from North Carolina and from our study of the language something new is being added which the Senate has no intention or desire to add. That something new is to make the proceeding before the court, which will result in giving a certificate of registration to an individual where there is no official referee appointed, itself an adversary proceeding, notwithstanding the fact that the State has already decided it does not wish to make the same proceeding before the referee an adversary proceeding.

It seems to me, therefore, Congress should not be forced into the artificial posture of preferring to have the matter brought to the voting referee because the voting referee has greater freedom of action than the court itself.

Therefore, that is the key, the fulcrum, of the reason why the amendment has to be rejected.

There is a court proceeding, either preceding or following the point I have just described—the point at which the individual has his preliminary determination as to whether or not he is entitled to registration and qualification for voting. At the stage beyond that, again there is no question about the fact that we are in a civil proceeding, with the right of objection, where a substantial question is involved; and the court again operates in an adversary proceeding way.

That is exactly what the referee proposal provides, if we do not add a word to it. I should like to analyze it, because it bears out, in its own text and words, exactly what I have been saying.

In the first place, if one looks at the bottom of page 15, lines 23 to 25, one finds specific reference to notice to the Attorney General and to all other parties and all the provisions which we normally establish for an adversary proceeding.

Then if one looks at page 18, beginning on line 8, to page 19, ending on line 7, we find again that when the referee has made his report, there is a complete procedure prescribed, normal adversary proceeding, to which, of course, the Rules of Civil Procedure will apply.

Where, however, in the interim, there is a proceeding before the voting referee, we have already determined we want that proceeding to be ex parte, we want notice of the time and place at which the ex parte proceeding will be held to be given by an order of the court, and we also have provided, on page 19, lines 11 to 17, that we wish to apply to the voting referee only a limited amount of the Federal Rules of Civil Procedure, the provisions contained in subsection (c) of rule 53.

The only thing we have not pinpointed specifically is, What does the court do where it, itself, chooses to act, in the intervening period, that is, between the finding of a pattern or practice and the final order, on notice, that a voting right is being given to a particular individual? What does the court do when it decides it does not want to appoint a referee, for whatever reason—there may not be enough cases, for example—and that the court will act, itself?

The danger is if we adopt the amendment, at that point we say it shall be an adversary proceeding in that intervening period.

It seems to me it would defeat the legislative intent, it is unnecessary under due process of law, and therefore, we should not invite difficulties into which it is likely to bring us, because at that particular point there is no need to protect any adversary party. Such a party has a full opportunity, before and after. We are not denying him any of it. Such a party can contest any question of fact. Such a party can contest any question of law. He can take as many appeals as he wishes.

What we are trying to avoid is a repetition of the drama which we are told, not only by northern members of the Civil Rights Commission, but by southern members of the Civil Rights Commission, has taken place decade after decade upon the stage of our Southern States. I assure Senators that fact is no source of pride to any of us as Americans, including anyone from the South. A climatic picture has been created that is unhealthy or inhospitable and one who attempts to register to vote would be better off not to try it.

So we are trying, through legal procedures which are entirely constitutional and proper under law—and I shall come to the constitutional question in a minute—to give as much help as we can—and I emphasize the words "as much as we can"—because this will still be a procedure which will be different from the case of the normal citizen making a normal entry into a normal registrar's office and being greeted with friendliness while dong his civic duty of registering to vote. We are trying to create, as well as we can, that kind of atmosphere for individuals who have been deprived of that right. If we wish to do it, we, ourselves, cannot incur the responsibility of making the procedure at that stage, whether it is before the judge or an official referee, an adversary proceeding.

I point out this amendment is not quite as innocuous as it may seem. I draw, as evidence of that fact, on the discussion which has been held in the Senate and the discussion before the Judiciary Committee, which first heard evidence upon this subject. It will be noted that in the debate in the Senate there has been no confining of this question of applicability of the rules of civil procedure to the particular procedure before the court. On the contrary, the friends of the amendment have argued it was wrong to do what was done about the voting referee, and so at least that wrong should be slightly righted by this amendment, at one and the same time that it is hotly contended it has no application to the voting referee.

Again, I think, it is subject to misconstruction which becomes possible when one reads the amendment and seeks to apply the rules of procedure, determined by the court, to any application made under this paragraph, to this subsection of the bill which we are discussing. Then the amendment goes on to say, however, in a complete change of direction, the rules shall apply to the extent that such rules are not inconsistent with the provisions of this whole subsection, which includes the voting referee provision.

Therefore, it seems to me we are pinpointing formally that we may not be talking only about the paragraph, but that the whole subsection on the voting referee is included. We at least give somebody an opportunity to make that argument and to take the question up to the Supreme Court of the United States when we write such a provision into the legislation.

I point out that is not such a far-fetched matter, because it took several years to defeat the decision of the lower court on what Congress was trying to do, in the Civil Rights Act of 1957, not in the case before the court, that it might be held to apply to individuals and not to State officers.

For that reason, Mr. President, the whole enforcement of the law was delayed for several years, while that question was tested in the Supreme Court of the United States. That was based on nothing in the statute, simply upon the

ideas of the judge. We can think of what could be made of the fact that the text of the statute itself indicates, by the writing in of something which is completely unnecessary, that the Senate and the Congress must have had something in mind; thereby allowing the court, which is trying very hard to find something, to play around with the language and to speculate on it.

Finally, Mr. President, I should like to speak on the issue of constitutionality.

Mr. KEATING. Mr. President, before the Senator does so, will he yield to me?

The PRESIDING OFFICER (Mr. HOLLAND in the chair). Does the Senator from New York yield?

Mr. JAVITS. I yield to my colleague.

Mr. KEATING. Does not the Senator view this amendment as seeking to do in a proceeding simply before the court what the Senate has already voted not to do in a proceeding before the referee, namely, to make it an adversary proceeding?

Mr. JAVITS. Exactly. The Senator from New York thanks his colleague, because this morning in the colloquy that was precisely, with the greatest of finesse, I will say, the point my colleague developed in cross-examining the Senator from North Carolina. I must say, with all deference, I think the Senator made that crystal clear from the colloquy with the Senator from North Carolina, the author of the amendment.

Mr. KEATING. I will say, with the utmost of respect for my very good friend from North Carolina, I would not agree with the senior Senator from New York that it was made clear by the answers of the Senator from North Carolina. I think it was made clear by my questions.

Mr. JAVITS. I think that is very true.

Mr. KEATING. The bill seeks to spell out procedures before the voting referee, which will conform as nearly as possible to those procedures which are generally applicable to registration before State officials. It cannot be made equally easy for these people, but we should try to make it as nearly as possible the same procedure for registering any person, regardless of color.

The amendment is addressed to those cases where the court elects not to name a referee but to handle the proceeding before the court. We have voted once that we will not have an adversary proceeding before the referee. I think we should vote against the amendment, because we certainly do not want that kind of a proceeding before the court, since there is a prior and a later opportunity to have a full day in court on the part of everyone.

Mr. JAVITS. I thank my colleague. Before my colleague came into the Chamber, when I was addressing myself to the due process of law provision, I pointed out, as my colleague has said in shorter space, that there is a complete adversary proceeding before, on the question of the pattern or practice, and a complete adversary proceeding afterward, after the entering of the interlocutory order that the court has found the person to be eligible to vote under State law and has proposed to have him vote. In both cases, in front and in back, the man could go up to the Supreme Court without any problem.

I pointed out, as my colleague knows, since he is a fine student of this bill and of the law, in this case we not only have the ordinary party defendant but also we have the Attorney General of the United States specifically referred to in the legislation. The whole legal machinery of the State would see to the adversary proceeding, both before and after.

The real reason for what we did on the referee question and for what we ought to do in regard to this provision, by turning down the amendment, is to expressly try to avoid the adversary proceeding, which has plunged us into all of the difficulties we are now having in regard to voting rights in the Southern States, where the climate has been inhospitable to the individual. That is what we would be perpetuating, if we agreed to the amendment; exactly what we are trying to avoid.

I am grateful to my colleague for again bringing out, as he did earlier in the day, this particular distinction. It has been a very great aid to me in presenting this matter, and I thank my colleague very much.

Mr. KEATING. I thank my colleague very much.

Mr. JAVITS. Mr. President, I have one other point, on the issue of constitutionality.

This is really strange, Mr. President. Now we have the opponents of this measure—who argue that it is a wrong measure, that it invades States rights, that we should not pass it, that we should leave this matter for the States—expressing their grave doubts as to whether the whole idea is constitutional.

Mr. President, by the amendment the opponents of the bill tell us they want to save us from our own mistake of making the legislation fall because it may be unconstitutional, because it fails to contain provisions with respect to due process of law.

Mr. ERVIN. Mr. President, will the Senator yield?

Mr. JAVITS. I will yield to the Senator in a minute. I hope the Senator will permit me to finish my thought.

The PRESIDING OFFICER. The Senator declines to yield.

Mr. JAVITS. Mr. President, I have said this a thousand times, and I hope to live long enough to say it a thousand times more. It seems to me, as I have said and as I feel, and as I repeat, that the opponents of this proposed legislation are as sincere as are those of us who are in favor of it and in favor of even stronger legislation. I have never questioned that.

I will add a point, and then I will yield to my colleague, the proponent of the amendment. I believe that in all good faith as a lawyer—as a thoughtful and extremely able lawyer—my colleague, in designing this amendment, would feel he was doing what ought to be done with respect to the proposed legislation. I also think it is only fair for those who are for the proposed legislation and who are extremely sympathetic to its basic purpose to point out that when we are considering an amendment which purports to be designed to fortify and to buttress something that a man is inherently against, we have a right to evaluate it and to analyze it with extreme care, to determine whether it really would help the proposed legislation or would serve some purpose, in which the Senator may believe very deeply, of making the legislation what he would consider to be more protective to the particular interests which he feels need to be subserved in respect to it.

That is all I say about the matter. I say it is a little odd that the arguments on constitutionality, the thought that constitutionality will be buttressed, should come from those who think this whole approach is unconstitutional.

I now yield to the Senator from North Carolina.

Mr. ERVIN. Mr. President, I simply want to assure the Senator from New York that I have great veneration for the Constitution and I am sincere in urging the amendment, because if we are to be hanged we want to be hanged in a constitutional manner.

Mr. JAVITS. The Senator has great color, great eloquence, and great charm. Now that I have been in the Senate for some time, I think those are the most attractive attributes of many of the men who come from the Senator's section of the country. However, I still think we have to hold ourselves, as it were, to the task of appraising these amendments in the light of an intensive analysis of the facts and of the law.

Mr. President, I wish to conclude with one other statement. I have taken up the question of the amendment with the Attorney General. I find that there is also objection to the amendment based fundamentally upon the ground which I stated when I began; that is, the danger of introducing an ambiguity, where none exists today. The Attorney General made that very clear in his testimony before the Committee on the Judiciary, to which reference has been made, at page 141 of the record before the committee. There is also objection on the question of giving ground for litigation where no ground for litigation now exists. Finally, there is the danger that this may actually be accomplishing a purpose which the Senate has already turned down in respect to an equivalent situation affecting voting referees.

For all of those reasons, Mr. President, I hope the amendment will be rejected.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk called the roll and the following Senators answered to their names:

[No. 153]

Aiken	Bush	Case, S. Dak.
Allott	Butler	Chavez
Anderson	Byrd, Va.	Church
Bartlett	Byrd, W. Va.	Clark
Beall	Cannon	Cooper
Bennett	Capehart	Cotton
Bible	Carlson	Curtis
Bridges	Carroll	Dirksen
Brunsdale	Case, N.J.	Douglas

Dworshak	Johnson, Tex.	Muskie
Eastland	Johnston, S.C.	Pastore
Ellender	Jordan	Prouty
Engle	Keating	Proxmire
Ervin	Kefauver	Robertson
Fong	Kerr	Russell
Frear	Kuchel	Saltonstall
Fulbright	Lausche	Schoeppel
Goldwater	Long, Hawaii	Scott
Gore	Long, La.	Smathers
Green	Lusk	Smith
Gruening	McCarthy	Sparkman
Hart	McClellan	Stennis
Hartke	McGee	Symington
Hayden	McNamara	Talmadge
Hennings	Magnuson	Thurmond
Hickenlooper	Mansfield	Wiley
Hill	Martin	Williams, Del.
Holland	Monroney	Williams, N.J.
Hruska	Morton	Yarborough
Jackson	Mundt	Young, N. Dak.
Javits	Murray	Young, Ohio

Mr. MANSFIELD. I announce that the Senator from Oregon [Mr. MORSE] and the Senator from Utah [Mr. Moss] are absent on official business.

The Senator from Connecticut [Mr. DODD] is absent because of illness.

The Senator from Minnesota [Mr. HUMPHREY], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Wyoming [Mr. O'MAHONEY], and the Senator from West Virginia [Mr. RANDOLPH] are necessarily absent.

The PRESIDING OFFICER (Mr. LUSK in the chair). A quorum is present. The question is on agreeing to the amendment offered by the Senator from North Carolina [Mr. ERVIN]. The yeas and nays have been ordered.

Mr. ERVIN obtained the floor.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. MANSFIELD. I wonder if it would be possible to come to an arrangement under which 5 minutes of debate would be allowed to each side, and then have the Senate vote on the pending amendment.

Mr. ERVIN. That would be entirely satisfactory to me. In fact, I urge that that course be taken.

Mr. CARROLL. Mr. President, how many Senators desire to speak on the other side of the question?

Mr. MANSFIELD. I will be glad to ask for 15 minutes. I do not care.

Mr. CARROLL. Can we ascertain how many Senators would wish to speak on the amendment? I should like to have 3 or 4 minutes.

Mr. MANSFIELD. So far as I know, only the Senator from North Carolina intends to speak on it. I do not know of any Senators who wish to speak on the other side. So I suppose the Senator from Colorado could use the other 5 minutes.

Mr. CARROLL. I do not wish to preclude anyone else. Are we going to proceed to vote on the amendment, or are we going to vote on a motion to table?

Mr. MANSFIELD. It will be a vote on the amendment.

Mr. President, I withdraw my request.

Mr. BUTLER. Mr. President, will the Senator yield before he withdraws his request? I should be glad to yield 5 minutes to the Senator from Colorado.

Mr. CARROLL. Mr. President, I have no objection.

Mr. MANSFIELD. Mr. President, I renew my request. I ask unanimous consent that the time for debate on the amendment be limited to 10 minutes, with 5 minutes allowed to each side.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. CARROLL. Does the Senator from Maryland yield me time?

Mr. BUTLER. I am prepared to yield 5 minutes to the Senator from Colorado.

Mr. ERVIN. Mr. President, I believe I can explain the amendment in 5 minutes. I have offered it as a lawyer rather than as a southerner. It has been held by the courts of this country many times that when a new procedure is created, it is necessary to require that there shall be notice and an opportunity to be heard by the adverse party. The bill sets up two procedures to be followed, one by the judge and the other by the referee. A procedure is spelled out which is to be followed by the referee, but there is no procedure spelled out for the judge to follow in cases where the judge passes on the application itself after he has made the adjudication that discrimination exists, based on race.

I offer the amendment to provide that the rules of civil procedure adopted by the Federal courts shall be followed by the judge in that case where there is no procedure prescribed, except to the extent where those rules are inconsistent with other provisions of the bill.

In any case where there is an inconsistency between the rules of civil procedure prescribed for the Federal district courts and the provisions of this subsection, then the provisions of the subsection will override and will govern.

This question came up in the Committee on the Judiciary. Mr. Charles J. Bloch, one of the ablest lawyers in the country, said that the rules of civil procedure prescribed for Federal district courts would not apply to a proceeding before a judge. A different position was taken by Deputy Attorney General Walsh. Judge Walsh said, at the bottom of page 141 of the hearings before the Committee on the Judiciary:

> I say that Mr. Bloch overlooks the fact that the Federal rules of civil practice apply to the extent that they are not expressly excluded or contradicted by the statute.

Mr. Bloch, a distinguished lawyer, disagreed with Deputy Attorney General Walsh.

The amendment merely makes it certain what Deputy Attorney General Walsh said is true. How anyone can object to the amendment is something which surpasses my powers of comprehension. The amendment simply makes certain what Judge Walsh said is actually the case. That is all the amendment provides. That is why it is offered by me and the Senator from Arkansas [Mr. MCCLELLAN] as lawyers rather than as southerners. We hate to see the United States Senate pass a bill which will make a mockery of what we conceive to be the true interpretation of the due process clause of the fifth amendment.

I trust that Senators will support the amendment, because it does nothing whatever except to make certain what Judge Walsh said is so.

Mr. LAUSCHE. Mr. President, will the Senator yield for a question?

Mr. ERVIN. I yield, if I have time.

Mr. LAUSCHE. Is there a limitation of time?

Mr. ERVIN. Yes. I have a minute remaining. I yield.

Mr. LAUSCHE. I raise the same question which was raised earlier today.

On line 6 of the Senator's amendment are the words "under this paragraph." Why should it not be "under this subsection to the extent that such rules are not inconsistent with the provision of this subsection"?

Mr. ERVIN. Because "this paragraph" deals with applications on which a judge will pass. The other paragraph deals with applications which will be passed upon by the voting referees. I simply wanted to make it plain that this amendment would not affect the bill so far as the voting referees are concerned.

The PRESIDING OFFICER. The time of the Senator from North Carolina has expired.

Mr KUCHEL. Mr. President, do I understand correctly that the unanimous-consent agreement provides 5 minutes for the proponents and 5 minutes for the opponents of the amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. KUCHEL. I was called from the Chamber at a time when apparently one of my——

Mr. RUSSELL. Mr. President, on whose time is the Senator from California speaking?

The PRESIDING OFFICER. The Senator from California is propounding a parliamentary inquiry.

Mr. RUSSELL. The Senator from Georgia did not hear a parliametnary inquiry propounded.

Mr. KUCHEL. Mr. President, I make this parliamentary inquiry, if the Senator from Georgia will permit me to do so: Would it be in order for me to ask that the 5 minutes allocated to the opponents be allocated 2½ minutes to the Senator from Colorado [Mr. CARROLL] and the remaining 2½ minutes to be reserved by the acting minority leader?

Mr. CARROLL. Mr. President, to help the Chair reach a decision, if I may, without losing any time, I understood before I gave my consent to the time limitation that I might have 5 minutes to speak.

Mr. RUSSELL. Mr. President, I move the regular order.

The PRESIDING OFFICER. The Chair has made up his mind and believes he needs no advice. The answer is "Yes."

Mr. KUCHEL. Mr. President, I renew my request.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Colorado is recognized for 2½ minutes.

Mr. CARROLL. Mr. President, it is difficult to answer in 2½ minutes the statement made by the Senator from North Carolina. The Senator from North Carolina is a distinguished lawyer, and he is supported in his views by another distinguished lawyer from the

South, Mr. Bloch, who testified in most of the congressional hearings on this subject.

There was a dispute between Mr. Bloch and Assistant Attorney General Walsh. Judge Walsh did not agree with the distinguished Senator from North Carolina and he did not agree with Mr. Bloch on this amendment, for the simple reason that he believed that the insertion of this amendment at this place in the bill might cause a weakness and cause problems in other sections of the bill.

I put a question to the Deputy Attorney General because I was impressed with the simplicity of the problem as it appeared to me at the time. In substance, I asked the Deputy Attorney General at the hearing of the subcommittee of the Committee on the Judiciary, "Why should not this provision be included in the bill?"

Judge Walsh gave his reasons. They are outlined in the record of our Judiciary Committee hearings at page 142. I do not have time to read them in 2½ minutes. But I say this is a dangerous amendment. I say "Beware of the Greeks bearing gifts." We had better look out for them and this amendment. The Deputy Attorney General said we had better look out for it.

The bill contains ample provisions to protect all substantial rights. We should not be misled by this amendment if we want to pass a good bill.

The PRESIDING OFFICER. The time of the Senator from Colorado has expired. The time is under the control of the acting minority leader.

Mr. KUCHEL. Mr. President, I yield 2 minutes to the distinguished Senator from New York.

Mr. JAVITS. Mr. President, I simply want to make now, when many Senators are in the Chamber, a point which was made earlier. The Attorney General made it very clear that this amendment is, in his view, unnecessary, at best. At worst, the amendment could cause litigation which would further bedevil what is already a bill going only a minimal way toward meeting the needs which are shown even in the voting rights field.

As to the due process of law argument, there is completely adversary proceeding at the beginning, when a pattern of practice is found. There is a completely adversary proceeding at the end, when, whether the court acts or the voting referee acts, the question comes up for determination, subject to any appeal and any objection, and any trial on all the facts, as to whether the particular individual whose name is to be recorded may be permitted to register and vote under the order originally made by the court. In the intervening period, the proceedings are ex parte. That is the way the Senate decided it wants to keep them. This should be true whether the proceedings are before a court or before a voting referee. We should do the same thing for both, in order to carry out the full legislative scheme.

In view of the fact that at best, the amendment is unnecessary, I hope the Senate will reject it.

The PRESIDING OFFICER. All time for debate has expired. The question is on agreeing to the amendment of the Senator from North Carolina [Mr. ERVIN]. The yeas and nays have been ordered.

Mr. KUCHEL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KUCHEL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from North Carolina. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD. I announce that the Senator from Oregon [Mr. MORSE] and the Senator from Utah [Mr. Moss] are absent on official business.

The Senator from Connecticut [Mr. DODD] is absent because of illness.

The Senator from Minnesota [Mr. HUMPHREY], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Wyoming [Mr. O'MAHONEY], and the Senator from West Virginia [Mr. RANDOLPH] are necessarily absent.

I further announce that if present and voting, the Senator from Connecticut [Mr. DODD], the Senator from Minnesota [Mr. HUMPHREY], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Oregon [Mr. MORSE], the Senator from Utah [Mr. Moss], the Senator from Wyoming [Mr. O'MAHONEY], and the Senator from West Virginia [Mr. RANDOLPH] would each vote "nay."

The result was announced—yeas 29, nays 64, as follows:

[No. 154]

YEAS—29

Bible	Gore	Robertson
Butler	Green	Russell
Byrd, Va.	Hill	Smathers
Cannon	Holland	Sparkman
Cooper	Johnston, S.C.	Stennis
Eastland	Jordan	Talmadge
Ellender	Kefauver	Thurmond
Ervin	Long, Hawaii	Williams, Del.
Frear	Long, La.	Young, Ohio
Fulbright	McClellan	

NAYS—64

Aiken	Dworshak	Magnuson
Allott	Engle	Mansfield
Anderson	Fong	Martin
Bartlett	Goldwater	Monroney
Beall	Gruening	Morton
Bennett	Hart	Mundt
Bridges	Hartke	Murray
Brunsdale	Hayden	Muskie
Bush	Hennings	Pastore
Byrd, W. Va.	Hickenlooper	Prouty
Capehart	Hruska	Proxmire
Carlson	Jackson	Saltonstall
Carroll	Javits	Schoeppel
Case, N.J.	Johnson, Tex.	Scott
Case, S. Dak.	Keating	Smith
Chavez	Kerr	Symington
Church	Kuchel	Wiley
Clark	Lausche	Williams, N.J.
Cotton	Lusk	Yarborough
Curtis	McCarthy	Young, N. Dak.
Dirksen	McGee	
Douglas	McNamara	

NOT VOTING—7

Dodd	Morse	Randolph
Humphrey	Moss	
Kennedy	O'Mahoney	

So Mr. ERVIN's amendment was rejected.

Mr. DIRKSEN. Mr. President, I move that the vote by which the amendment was rejected be reconsidered.

Mr. JOHNSON of Texas. Mr. President, I move to lay on the table the motion to reconsider.

The PRESIDING OFFICER (Mr. MCGEE in the chair). The question is on agreeing to the motion to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. ELLENDER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ELLENDER. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill is open to further amendment.

Mr. DIRKSEN. Mr. President, the third reading.

The PRESIDING OFFICER. The third reading——

Mr. ERVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. A quorum call has been requested. The clerk will call the roll——

Mr. CASE of South Dakota. Mr. President, a point of order.

Mr. JAVITS. Mr. President, a point of order.

Mr. CASE of South Dakota. No business has been transacted since the last quorum call.

Mr. ERVIN. Mr. President, I move that the Senate stand in recess for 15 minutes.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from North Carolina.

The motion was rejected.

Mr. ERVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTES TO MORRIS L. COOKE

Mr. MURRAY. Mr. President, on March 10 I paid tribute to the memory of the late Morris L. Cooke, first Administrator of the Rural Electrification Administration, who contributed in many ways during his lifetime to our national development. At that time I announced that I would offer tributes of several of his friends for the RECORD. I now ask unanimous consent that a number of such tributes, giving glimpses of Mr. Cooke's great public services, be printed in the RECORD.

For the benefit of those who read these tributes, I would like to identify the authors very briefly.

Mrs. Eleanor Roosevelt is the widow of President Franklin D. Roosevelt, leader of the New Deal to which Morris L. Cooke contributed much. She is an outstanding national and international personage in her own right.

Gordon R. Clapp is a former Chairman of the Tennessee Valley Authority and one of the architects of that great agency, a world model of regional development.

Hugh H. Bennett was the first Administrator of the Soil Conservation Service and "Mr. Conservation" to my generation of American citizens.

Perry R. Taylor was a pioneer with Mr. Cooke in the REA movement, and in small watershed, pollution abatement, and other conservation fields.

David Cushman Coyle is an economist, author, and conservationist of great renown.

Benton MacKaye, a research forester with the Forest Service from 1905 to 1918, aided in developing the regional plans of TVA, proposed the plan for the Appalachian Trail, and has served the Government with distinction in numerous conservation fields.

Benton J. Stong, a member of my staff, was associated with Mr. Cooke in power, watershed, and other conservation projects.

Ralph Kaul, Arlington County, Va., county board member, was with Mr. Cooke in Mexico during the settlement of our oil dispute with that nation.

Judson C. Dickerman, an old friend now living at Charlottesville, Va., knew Mr. Cooke's work in Philadelphia, aided him in stimulating development of power supply in Puerto Rico, and in other projects.

William O. Lechtner, of Brookline, Mass., served with Mr. Cooke on his successful wartime mission to Brazil and other undertakings.

Edward A. Harris is a distinguished Pulitzer Prize winning Washington reporter and author.

Dewey Anderson, director of the Public Affairs Institute, was on the staff of the Temporary National Economic Committee, staff director of the Senate Small Business Committee for several years, and was chief of the American Hemisphere Division of the Board of Economic Warfare in World War II which stimulated Mr. Cooke's mission to Brazil.

Leland Olds, director of Energy Research Associates and former Chairman of the Federal Power Commission, worked with Morris Cooke on the New York Power Authority and on President Truman's National Water Resources Policy Commission.

James B. Carey is vice president of the AFL–CIO and president of the International Union of Electrical, Radio & Machine Workers, AFL–CIO.

There being no objection, the tributes were ordered to be printed in the RECORD, as follows:

NEW YORK, *March 14, 1960.*

Hon. JAMES E. MURRAY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: The Nation's loss in the death of Morris Llewellyn Cooke will be felt by many. I feel constrained to write to you about him and his distinguished career because of your long record of concern and effort in helping to shape national policy for the wiser conservation and use of our natural resources.

Mr. Cooke worked and labored for the same objectives. On the occasion of his death it seems appropriate to commemorate in some way the contribution of this determined, wise and competent friend whose individual efforts over many years made so much difference in the public policy decisions affecting—for better—the lives of millions. In the course of his long and distinguished career in and out of the public service, the vigor and courage of his clear, articulate and persuasive competence and concern were felt far beyond the immediate post he occupied at the time.

He never turned his back on controversial questions about which he believed he was qualified to speak. Throughout his lifetime, the policies and practical measures affecting the conservation of our natural resources—the frequent subject of public controversy—were an almost constant object of his attention and dedicated study. In these days when citizen participation in controversy over public policy is discouraged in some quarters, the example of Morris Llewellyn Cooke and what he accomplished by speaking out on public issues should encourage others to do so now.

As an engineer and as a knowledgeable layman, he demonstrated an exemplary persistence in trying to get the public to understand the pros and cons of alternative courses of action—and he never hesitated to make his own view and his own position on these matters unequivocally clear.

He had a knack for bringing big issues in this field within reach of decision on the basis of specific and concrete cases. He marshaled facts, assembled and assessed engineering judgments, and contributed to the creation of workable choices of policy alternatives which made it possible for other citizens—and policymakers—to assess which side of an argument was favored by a concern for the general welfare. The issues concerning minerals, forests, grazing lands, the small watershed and the big river valley never ceased to command his energies and creative interpretation to arouse greater and more enlightened citizen interest in the outcome. Whether one agreed with his particular view in a specific case, one respected and valued his method and his purpose—and always learned something by listening.

All citizens owe him a great debt: for his contribution to the Nation's strength and conscience and for his personal demonstration of the wisdom of the thesis that men and their views clearly and forcefully expressed do make a difference in the outcome of public debate and decision.

I am glad to join with you in commemorating Morris Cooke's life of service, and through you, with many others who know of his work and prize his example.

Sincerely,

GORDON R. CLAPP.

NEW YORK, N.Y., *March 11, 1960.*

DEAR SENATOR MURRAY: My husband trusted and admired Morris Llewellyn Cooke. He would have wanted to pay tribute to him as a man and as an ornament to his profession.

I am glad that this tribute is being paid to Mr. Cooke and I would like to join his friends in highest praise of him.

Very sincerely yours,

ELEANOR ROOSEVELT.

MORRIS L. COOKE'S NOTABLE CONTRIBUTIONS TO CONSERVATION AND OPTIMUM USE OF NATURAL RESOURCES

(By Hugh H. Bennett)

At the outset I want to say that Morris Cooke made the greatest alltime contribution to the Nation's program of optimum use and protection of its basic natural resources. This evaluation is based on my intimate knowledge of his endeavors and accomplishments in the broad field of resource use and conservation.

My first acquaintance with this soft-spoken gentleman was early in 1934. He was chairman of the Mississippi Valley Committee of the Public Works Administration. I was directing the newly established Soil Erosion Service of the Department of the Interior. He had come over to my office to ask a few simple questions as to my ideas about the relation of soil erosion and soil conservation to the broad problem of water management and optimum use. Just before departing, he very politely asked if I would, on the following day, come over to his office and talk to his committee about my ideas with respect to the relationships we had discussed. My compliance sealed a closely working and long-lasting relationship that was never seriously interrupted.

I came to understand him best shortly afterward while serving as a member of the President's Great Plains Committee, of which Cooke was Chairman.

Protracted drought had brought the agricultural outlook of the region to gloom and disappointment. In the Texas Panhandle, near Dalhart, vegetation had so completely disappeared, a plains crow had built its nest of fragments of wire picked up about the deserted homes of farmers and ranchers. Great numbers of hungry cattle had been shipped to eastern pastures. Dust storms, dust pneumonia and sun-parched fields had started thousands on westward migration. Even some members of our Committee seemed to think the country was "not worth saving," and wearied of the long and desolate journey from Amarillo, Tex., to Bismarck, N. Dak., more than a thousand miles to the north.

But not Cooke. No sign of lagging interest or weariness with him. All day, day after day, he talked with farmers and ranchers who said they were moving out. He talked longer with those who declared they were hanging on. The rains will come again; we'll stay if we can find the means to keep us alive. During overnight stops in towns along the way, he interviewed merchants, bankers, and representatives at governmental agencies, local, State and Federal, recording their ideas about the immediate and longtime future.

I couldn't keep awake long enough to find out whether Cooke ever went to bed. At breakfast, he was there on time always, cheerful, hungry and ready for an early start northward.

At Bismarck, we reported to the President in his private car parked with the Great Plains train that had brought him from Washington. He listened attentively to our reports and recommendations, although interrupting to ask about the practicability of actions we thought might be undertaken.

Later, in transmitting our condensed Committee report to Congress as a message from the President, Document No. 144, 74th Congress, 1st session, the President said:

"This report indicates clearly that the problem of the Great Plains is not merely one of relief of a people * * * who have been stricken by several years of drought during a period of economic depression. It is much more fundamental. The problem is one of arresting the decline of an agricultural economy not adapted to the climatic conditions because of lack of information and understanding at the time of settlement and of readjusting that economy in the light of later experience and scientific information now available."

The Upstream Engineering Conference held in Washington, September 22 and 23, 1936, accomplished more, in my opinion, to educate the Nation with respect to the widely

ramifying aspects of sound use and conservation of our basic natural resources than all preceding conferences combined.

I first heard of it from Morris Cooke. Circumstances convinced me he had obtained the President's approval before a step was taken. He very wisely took the precaution to look carefully into the reaction from the higher echelons of Government before going into action, particularly where governmental agencies were to be involved. This, with proper handling, eliminated possible embarrassing situations.

In the conference, outstanding leaders in science, engineering, education, and other allied fields presented papers on 61 aspects of the resource problem. Proceedings of the conference containing all of the papers and discussions pertaining thereto indicate virtually no overlapping of subject matter.

In his letter to the Secretary of Agriculture regarding instructions for the meeting, the President had said:

"Upstream engineering seeks, through forestry and land management to keep water out of streams, to control its action once in streams and generally to retard the journey of the raindrop to the sea."

Cooke, in his address to the Congress said:

"If we visualize all the waters of a drainage basin, we perceive that between the sector where engineers are concerned with farm and forest conditions and problems and the * * * sector where engineers are * * * concerned with navigation, floods, and power on major rivers is an intermediate sector of ponds, creeks * * * and small tributaries which engineering has not taken actively into consideration. * * * Today there is appearing * * * concern * * * all along the line from * * * the trickle of raindrops on farmers' fields to * * * control of navigation, floods, and reservoirs on main stems.

"The purpose * * * is to emphasize several aspects of unity and to urge a farflung attack on pressing national problems in which engineering in many specialized forms—agricultural, soil conservation, forest, sanitation, small stream and big stream—are integrated into a single enterprise for the national welfare.

"I desire at this time to indicate my own position unequivocally and emphatically. I am convinced that the national welfare * * * is at stake. Obviously in a conference such as we are now holding, with an attendance representative of all fields of engineering and of all parts of the United States, each selected differently, there are gradations of opinion as to the gravity of erosion and other aspects of the present situation. Every such opinion must be respected, even if not accepted. * * * We may not yet know how to cope with water and land waste problems in all their phases, but we should mark ourselves down as mice rather than as men, were we not to rise to the attack with all the resources at our command expecting to strengthen our present knowledge in the course of a hard-fought campaign.

"The menace to the United States is a complex problem created largely by uses of land and water in many places in a manner not warranted by basic physical conditions. It has varying aspects: An appalling rate of soil erosion; minor and major floods; low dry-season stream flow; pollution of lakes and streams; inadequacy of clean water supply; diminution of the ground-water store; and failure to use waters to greater social advantage as they flow to the seas."

Enough has been said, I think, to explain—and to justify—Cooke's tendency to find engineering aspects in many of our problems of land use and water use. Engineering principles are involved with most conservation problems except those that run more or less along lines of economic and legal procedures and attitudes of mind. I cannot recall having heard of a single objection raised against the Upstream Engineering Conference, its name or working methods. Actually, it was, in a large degree, a conference of headwaters control and use. This it is called on the volume of proceedings published cooperatively by the Soil Conservation Service, Forest Service, U.S. Department of Agriculture, and Rural Electrification Administration—of which Cooke was Administrator at the time.

The Upstream Engineering Conference led into the World Power Conference held at Washington shortly afterward. There is little point going into further detail with respect to Morris Cooke's endeavors and accomplishments. One followed another until broken health brought the end. What he did followed, from beginning to end, a pattern of optimum use and protection of our limited supplies of natural resources. Many years ago I rated Morris L. Cooke as a great patriot of the Nation by reason of his unceasing efforts to keep our country strong through wise use and protection of those natural resources upon which a nation's strength depends. Such evaluation of the man was strengthened within myself as the years passed.

An incident that revealed Cooke's outstanding convictions with respect to soil conservation I cannot overlook. It took place when the Soil Erosion Service—predecessor of the Soil Conservation Service—was still using relief funds from Public Works Administration.

An allotment board was set up by the President to handle the big public-works allotment of 1935. Secretary Ickes, head of Public Works Administration, was chairman. Other members were Silcox (Chief of Forest Service), Tugwell, Morris Cooke, Harry Hopkins, myself, and some others I seem to have forgotten. The President always met with us.

We had requested $25 million for Soil Erosion Service expenses. Harry Hopkins refused to consent, arguing that our cost per man given employment was too high. Explanations had failed. It looked like the end for the Nation's soil-conservation program, which had made a highly successful start. At this gloomy juncture, Morris Cooke spoke up, addressing a request directly to the President. He asked for 3 weeks to prepare for the board's consideration a special report in support of the allotment requested for soil conservation. As well as I remember, the President immediately replied, saying, "Your request has my approval, Morris, but try to bring in your report in 2 weeks."

At the end of 2 weeks, Cooke's report, all neatly printed and profusely illustrated, was passed around. As well as I can recall, it stressed, among other things, that dollars spent every year for control of soil erosion meant a much larger annual saving of dollars through soil conservation. Silence prevailed for some time. No objection was heard—and soil conservation is still going a quarter of a century after that narrow escape.

Finally, let me ask, Could I possibly feel toward Morris Cooke any less than most grateful for what he did to help the Nation's program of soil conservation?

The answer is, "I could not."

THE BIRTH OF REA—AN EXAMPLE OF EXPEDITIOUS OPERATION

(By Perry R. Taylor)

Morris L. Cooke was a most inspiring leader. He could bring the best out of subordinates without appearing to try to do so. To be in his presence even for a short time was a stimulating experience, which never seemed to fade even after 37 years of intermittent association. This remarkable quality was due in part to his dynamic nature and partly to his stature and breadth.

On May 1, 1935, the President called on Mr. Cooke to undertake the none too easy task of initiating a rural electrification program using funds appropriated by the Emergency Relief Act of 1935. Secretary Ickes was in the White House at the time and offered help in obtaining personnel and office facilities. Mr. Cooke was quick to take advantage of that offer by having a memorandum drafted asking the Secretary for the immediate detail of five men, who were specifically named, and for the privilege of negotiating with division chiefs of agencies under the Secretary's jurisdiction for the detail of clerical personnel. The memorandum also arranged for me to enlist Mr. Burlew's "good and immediate offices" to secure temporary quarters and furniture in the Interior Building. The Secretary penned the following note on this memorandum, "Approved, H. L. I." With this authority, things began to happen.

The next day a shingle was hung out of the temporary quarters labeled "Rural Electrification Unit." Of course, the question was immediately raised, "Unit of what?" The answer, "Just a unit." But Mr. Cooke was able to report to the President that he was ready to do business less than 24 hours after receiving the go-ahead signal.

The painstaking task of developing an executive order, having it cleared through many important places and obtaining the President's signature took 2 weeks. The order, No. 7037, was made official on May 11. In the meantime business was really booming. Nothing official could be done, but lawyers, engineers, and clerks were taken on, some without any immediate compensation, but all were interested in and willing to take part in this trail-blazing enterprise. All requests for construction of rural lines were noted and promises made to consider them in due time.

The time was not to be very long. Although the legal right existed as of May 11 to operate a program, nothing could be done until an administrator could be appointed and qualified. This required confirmation by and with the advice and consent of the Senate, which might have taken considerable time. The contemplation of any delay was most distasteful to a man of Mr. Cooke's energy and resourcefulness. His natural reaction was to do something forthright about the problem and so he asked the President to appoint a temporary executive officer to exercise and perform the functions and duties prescribed for the Rural Electrification Administration pending the appointment and qualification of the Administrator. It was my privilege to undertake this responsibility, under the authority of Executive Order No. 7040 of May 15.

Under Mr. Cooke's guidance, the various formalities of organizing a new agency in Government were executed. People were employed, furniture and supplies obtained and office space secured. The Rural Electrification Administration occupied the former James G. Blaine Mansion at 2000 Massachusetts Avenue on May 18. In only a few days, Senate confirmation of Mr. Cooke's appointment came about and the story from that point is, of course, well known.

But what is not perhaps so well known is the impact of that marvelous personality on the members of his organization. With charm and dignity and resource, he built morale in the organization which earned for it the well-deserved credit of being the finest in Washington at that time. Such accomplishments do not just happen; they must be activated through an art—the gifted art of superb leadership. This art was possessed in a marked degree by Morris Llewellyn Cooke.

Although the creation of the Rural Electrification Administration was the most exciting association which I have had with Mr. Cooke, there were many others over a period of nearly 40 years, the recollections of which reminds me of having the rare opportunity of being close to a truly great man.

A PIONEER IN POWER AND CONSERVATION

(By Leland Olds)

We may well look to the Pennsylvania Giant Power Survey of 1925, directed by Morris Cooke under the governorship of the great conservationist Gifford Pinchot, for many of the sprouts that grew to full stature in New Deal power and resources policy. There we find his concept of the wedding of democracy and science, management engineering applied to the Government's necessary planning functions.

Thus, in the 1925 giant power report we find important roots of many developments associated with the New Deal President; the TVA and Bonneville giant power systems; the New York Power Authority distribution cost studies; the REA program; the new emphasis on multipurpose conservation storage in river basin programs; and the final codification of water policy in the report of President Truman's Water Resources Policy Commission.

In fact, we know that during the early formative days of the New Deal attempt to restart the Nation's economic life on a more secure basis, Morris Cooke was a member of the little group at the White House working close to the President, giving birth to ideas. It was there that REA was born—but the foundation was laid back in the days of the giant power survey.

It is interesting to note some of the names in the giant power advisory committee. It included Charles W. Eliot and Charles E. Merriam later to play parts in the New Deal's National Resources Planning Board; Arthur E. Morgan, first Chairman of TVA; and Senator George W. Norris, father to both the TVA and REA Acts. It included E. F. Scattergood, dynamic general manager of the Los Angeles municipal electric system, responsible for the first important engineering reconnaissance of the lower Colorado's power potential and for the drive that led to the great Boulder Canyon project (misnamed Hoover Dam). It also included Samuel Gompers, president of the American Federation of Labor, and author of three important articles on the interests of labor in giant power, the first published in the American Federationist in December 1923.

Space does not permit full justice to the substance of Cooke's report as director of the giant power survey or to the six pioneering technical reports on which it was based. But, before turning to the background for the later REA program, I will quote two paragraphs which have great relevance to the later New Deal program and to the future of electric power in America.

First, he saw storage of floodwaters as contributions to the larger flows required for condensing water for large steam generation near coal mines. Then he went on to amplify on the value of water storage. He said:

"All sorts of benefits flow from water storage or water regulation on a large scale, as they do from financial or banking stability. Water is the currency of life and industry. The steadier the supply and demand the greater the direct and indirect economies. By water storage flood destruction may be reduced, waterpower increased, municipal supplies provided and stream beds flushed out and otherwise purified during the hot summer days when sewage, mine and industrial wastes are most in evidence. While it might not pay to store water for condensing purposes alone yet the combination of uses, each aiding the other is distinctly profitable to the whole group of uses, industrial, sanitary and recreational as well" (p. 31).

This was 2 years before Congress authorized the Corps of Engineers to undertake the famous "308" plans for multiple-purpose development of the country's rivers. It reflected the thinking of the conservation movement, of which Governor Pinchot was an outstanding leader.

In this report Morris Cooke emphasized especially the importance of integration of power supply as contrasted with mere interconnection of vertically organized electric utilities "to give the whole territory thus integrated the advance of the cheapest possible electric generation at the lowest possible transmission cost." Speaking as a management engineer, he concluded:

"To produce power at the lowest cost mass production in the full meaning of that term must be practiced all the way from the face of the coal seam to the distributor's substation. This means not only large-scale production carried on at the most advantageous sites and under the most favorable conditions but practicing every economy, 'Ford methods' in short. The development of such giant power industry can be accomplished through the cooperative efforts of the Commonwealth and the electric power utilities."

This point of view was echoed 25 years later in the 1950 report of the President's Water Resources Policy Commission of which Cooke was Chairman. Recent reports indicate that, aside from TVA and Bonneville, Soviet Russia and Western Europe may have jumped ahead of us in adopting this concept.

THE GENESIS OF REA

In Morris Cooke's Giant Power Survey report, supported by a technical report with an extensive appendix devoted to the subject, we find him developing the factual basis on which 10 years later the REA was launched. Actually, 2 years earlier in August 1923, the Farm Journal had carried his article on "Farm Electric Power Two-thirds Cheaper—Cost of Current to Farmers of Ontario From the Hydroelectric Commission."

In his report as director of the survey, Cooke noted that out of 202,250 farms in Pennsylvania, 178,666 were without electric service of any kind, while only 12,452 were served by public utilities. He saw the farmer as essentially a power user rather than a light user. He wrote:

"Rural electrification means more than simply connecting the farms with the distribution system. It means a rate structure so arranged as to encourage a constantly increasing use and rates themselves based on the actual cost of service plus a fair profit. Only by bringing about large rural use of current can electric service vitally affect rural life" (p. 38).

His use of the words "actual cost" can only be understood in terms of his management engineer approach to lower costs. He had previously commented on costs under utility regulation as follows:

"It should be remembered that regulation at present affords almost no incentive to efficiency. The influence toward better methods exerted by competition in private industry has been largely eliminated among utilities and thus far nothing has been found to take its place. With rates based theoretically at least on what a service costs and with almost no reference to what it should cost there is no very strong urge for a service company to pioneer in any large way" (p. 15).

Pioneering in lower costs of electric service was one of Cooke's major interests in both the TVA and REA programs, as it was in the work which J. D. Ross was doing as superintendent of Seattle City Light. In fact, he saw to it that "J. D." (Ross) told the story of "The Effect of Cost of Electricity on Use," at the Institute of Public Engineering which launched the pioneer attack on the cost of distributing electricity to homes and farms.

Giant Power Survey Technical Report No. 5, with its detailed appendix, was prepared as a basis for the Survey Director Cooke's recommendations on rural electrification. It develops the potential uses of electricity on the farm, many of them only partially realized today. It also goes into the cost of extending rural service and the question of rates. In a sense, it provided a real basis for the report, prepared by Morris Cooke in the spring of 1934, which caught the President's eye and started the REA on its way as a joint contribution to the farmers and to industrial employment. It is interesting that George H. Morse, engineer and scientist, assigned by Cooke to this job, later played an important part in the New York Power Authority's first distribution cost study and moved on to participate in the late thirties in the Federal Power Commission's first national power survey.

As Marquis Childs points out in "The Farmer Takes a Hand," Cooke's most important contribution to the start of the rural electrification program was his analysis of the cost of distributing power. According to Childs:

"Determined to crack the secret of distribution costs, Cooke and a staff of assistants itemized the expense of all the elements that went into the building of a powerline. * * * Making generous allowance for error, he still came up with the construction costs of powerlines $300 to $1,500 cheaper per mile than that given by the private power companies" (pp. 46–47).

Childs says that the importance of the study Cooke initiated can scarcely be stressed too much. He adds:

"By stripping away the mask of higher distribution costs he proved that it would be possible for the power companies to bring their lines out into the country for a fraction of the charge that had been standard up to then" (p. 47).

Childs refers to Cooke's widespread emphasis on "the necessity of spreading electricity far beyond the easy confines of town and city," on the policy of area coverage, as a "major element in the whole complex of events that combined to bring about a revolution in rural America" (p. 17).

PIONEER STUDY OF DISTRIBUTION COSTS

The New York Power Authority sponsored Institute of Public Engineering, which Morris Cooke organized to launch the study of the cost of distributing electricity, was typical of his way of mobilizing a wide range of technical competence and bringing it to bear on a problem of major public interest. The results appeared in a paper-backed book of nearly 300 pages called "What Electricity Costs in the Home and on the Farm." A symposium, edited by Morris Llewellyn Cooke and published in 1933 by the New Republic, Inc.

Cooke had Clayton W. Pike, past president of the Engineers Club of Philadelphia, and former chief engineer of the Philadelphia Electrical Bureau, an old member of his team, prepare a preliminary report embodying technical conclusions based on the then average home use of electricity. He made Pike's analysis available to an extraordinary group of experts and asked them to discuss the problem in the light of the report.

The list of participants included James C. Bonbright, professor of finance at Columbia University, and trustee of the New York Power Authority; John Maurice Clark, professor of economics at Columbia and author of "Economics of Overhead Cost"; Chairman Milo R. Maltbie of the New York Public Service Commission and the chief of the commission's bureau of research; Chairman Clyde L. King of the Pennsylvania Public Service Commission; President Samuel Ferguson of the Hartford Electric Co.; E. F. Scattergood, chief electrical engineer and general manager of the Los Angeles Bureau of Power & Light, together with his electrical engineer in charge of operation; J. D. Ross, superintendent of the Seattle Lighting Department; and an outstanding group of consulting electrical and management engineers. A significant member of the group

was General Manager E. V. Buchanan of the London, Ontario, Public Utilities Commission.

Cooke, in a foreword, recognized that the failure of the industry to deal constructively with the cost of distributing electricity was just part of the larger failure to deal with the excessive cost of distribution throughout our whole economic system. He wrote:

"American mass production techniques have lowered unit costs of practically all products in sensational fashion. But at the point where the distributive process begins we seem to lose our cunning. * * * Our splendid achievements in simplifying, mechanizing, and speeding up the manufacturing and production process are in obvious contrast with the way in which the distribution process becomes always more detailed and cumbersome and self-frustrating. The task of getting the products of agriculture and industry into use at the least possible expense, which means the complete rationalization of the distribution process, is one of the master longrun problems confronting the Nation" (pp. XIII–XIV).

In his later résumé of the discussion of Pike's *distribution* cost paper he found "the confirmation of Major Pike's conclusions both as to detail and in summary" quite remarkable. He continued: "It means that the foundation stones of electric distribution cost finding have been laid. To engineers and other technicians we can confidently look for the completion of the structure" (pp. 103–104).

This represented a fundamental contribution to the future possibilities of low electric rates, the essential basis for large residential and farm use. A year later the continuing study by the power authority led to a statement, signed by Morse (formerly author of the Pennsylvania Giant Power Study of rural electrification) as engineer-in-charge, eight field engineers working under his direction, and five consultants, including Mr. Cooke. The statement found that the overall average cost of local distribution of electricity in communities where average consumption exceeds 100 kilowatt-hours per month would be 1 cent or less per kilowatt-hour. It continued:

"Distribution costs per kilowatt-hour go down as use goes up. By doubling the consumption the unit cost per kilowatt-hour is about cut in half. The annual distribution cost per average domestic consumer is almost a fixed amount independent of the quantity of electricity used. Cost factors other than use tend to offset one another. Such are the conclusions which may fairly be drawn from the data gathered in the survey and submitted in detail herewith."

Here was the foundation for the all-electric home and the all-electric farm of the future. And it is significant that this first broad study of the cost of distributing electricity was submitted to the President of the United States, as well as to the Governor of the State of New York. It was submitted in November 1934, in the critical period when Morris Cooke's recommendation for a Federal rural electrification program was under consideration.

DETONATING FORCE WHICH STARTED RURAL ELECTRIFICATION

Early in 1934 Morris Cooke came to me as executive secretary of the power authority of the State of New York, and asked to borrow George Hyde, an engineer who had shown an unusual capacity for preparing graphic material illustrating the public interest in electricity. Cooke had resigned from the authority and was working in close contact with the White House in the creative burst that led the country out of fear. He felt that, if a rural electrification program could be presented in such a way as to catch the eye and imagination of Secretary of the Interior Ickes and the President, the way would be opened.

On the basis of the joint work of a group of engineers and others who composed his team in Philadelphia, with George Hyde's illustrative skill, Cooke was able to present to President Roosevelt, with the support of Secretary Ickes, who was also PWA Director, his "National Plan for the Advancement of Rural Electrification Under Federal Leadership."

This report, prepared for 12 minutes reading, with illustrations and supporting appendices, Cooke told me later, appealed to the President as offering a practical program for reaching an objective in which he had been interested for some years. Although a year was to pass before the program was launched, Cook considered this memorandum the detonating force which started rural electrification.

In October 1934 the Mississippi Valley Committee, of which Cooke was chairman, reported that electrification of rural areas within reasonable time depended on active leadership of the Federal Government. Two months later the National Resources Board reported favorably and Congress included rural electrification as one of eight broad groups of projects specifically mentioned in the Relief Appropriations Act of 1935.

Thus the ground was laid for President Roosevelt's Executive order of May 11, 1935, creating the Rural Electrification Administration "to initiate, formulate, administer, and supervise a program of approved projects with respect to the generation, transmission, and distribution of electric energy in rural areas." Mr. Cooke became the first REA Administrator and started a program which substituted the engineering planning of areawide rural service for the haphazard, piecemeal approach under which private power companies had brought electricity to only about 1 farm in 10.

It is small wonder that, at its annual convention last February, celebrating the silver jubilee of REA, the National Rural Electric Cooperative Association, representing some 4 million rural families now blessed with electricity, gave Morris Llewellyn Cooke one of its rarely bestowed Distinguished Service Awards.

SUMMING IT ALL UP

Fifteen years later Morris Llewellyn Cooke served as Chairman of the President's Water Resources Policy Commission, appointed by President Truman to provide the country with a unified policy for the management of its river basins. The report of this Commission was issued in three volumes: "A Water Policy for the American People," "Ten Rivers in America's Future," and "Water Resources Law" (1950–51).

In a sense this Commission summed up or codified, if you will, the broad policies which had expressed themselves in the giant power survey report, in the Power Authority Institute of Public Engineering, the plan for a Federal rural electric program, the Mississippi Valley report, and more broadly, the conservation movement which President Theodore Roosevelt launched in 1908.

The Commission recommended that the policy embodied in its recommendations "be incorporated in a single statute stating both principles and policies, together with provisions requiring their application to all Federal water resources activities irrespective of the agency or agencies concerned." The Commission offered the draft of such a statute and Mr. Cooke subsequently had it reprinted for wide circulation. So far no action has been taken on it by either President or Congress.

My memorandum reflects only one man's contact with a great management engineer who fully accepted his responsibility to use his talents for the benefit of the society in which he lived. In the field of electric power and resources he was a leader in the application of practical planning to achievement of higher standards of living for all the people.

Morris Llewellyn Cooke, as I knew him, was essentially a planner basing his work on mastery of the facts, a catalyzer, a starter of great undertakings who expected others to carry out the programs which he in a sense invented. The program which extended electrification to rural life is going forward mightily. But the program which would assure rural as well as urban distribution systems unlimited supplies of low-cost power from regional giant power is still our responsibility.

A Genuine Geotechnist

(By Benton MacKaye)

Morris Cooke was one of the few engineers whom I ever knew who was a genuine geotechnist. For his eye never left the ultimate aim of making the earth more habitable. In this, indeed, he was the "ultimate engineer." Shorn of doctrine for this or that utopia, he fell not for the worship of the iron calf of mechanism nor of the bonny satyr of pantheism. His was the straight and rugged course toward a land worth living in, both the making and enjoying.

My own contacts with Cooke concerned his work on "giant power" and on water resources. In both of these, he saw every river whole. As a dynamo of energy to relieve the backs of men. As a sanctuary to relieve their souls. Too often be these concepts in head-on collision. Hence the need of the ultimate engineer. (Alas, some "penultimate" is usually in charge.) But here it was that I knew Morris Cooke—his head and hand ever on highest habitability. His sage decisions in the court of terrestrial justice belong in every course in the schools of his profession.

Friend of Labor

(By James B. Carey)

The American labor movement and the working men and women of our Nation will always be indebted to Morris Cooke for his enduring contributions to a better world not only for Americans but for the peoples of all countries.

I recall that Kenneth T. Trombley, in his biography of Morris, wrote:

"As a young financial writer, he discovered to his amazement a fact that nearly everyone else knew: that a relatively few men largely controlled business in the United States. He was shocked when he learned that one—J. Pierpont Morgan—had so much money that the Federal Government borrowed from him. And, to take another Mr. Big, it didn't make sense to Cooke that in 1 year Andrew Carnegie should make 23 million tax free dollars while his laborers made about $4.37 a week."

This little story of Cooke's early life reveals the characteristics which made Cooke a great and useful citizen. He was always looking for the facts and willing to face up to them when he found them. He had an unshakable faith in democracy and democratic processes. He had a great feeling of sympathy for the underdog, and a corresponding lack of servility for the rich and powerful.

Many years later he coauthored a book with the late Philip Murray, president of the CIO, in an effort to pave the way for more effective cooperation in production in order that the lives of all people might be enriched, and also that owners, managers and workers might work amicably for the development of new social and economic understanding.

Years later, while working in the garment industry, Cooke had this observation to make on the extremely bad working conditions in this industry: "I remember hundreds of garment workers standing in line to answer to a company's call for 10 employees. They were made to write the wages they expected on a piece of paper, and hand it in when they reached the hiring table. Watching the proceedings, I became expert at estimating what was on an individual's sheet of paper. It was easy—all one had to do was study the condition of the man's shoes and the elbows of his jacket. One hole, $10 a week. Two holes, $8 a week, and so on."

In the steel industry he found 200,000 men working 12 hours a day (and almost 30 percent of them worked 7 days a week (for an average weekly wage of $15. Cooke worked hard to bring about a reorganization of the industry with a shorter day and higher wages based on greater productivity.

All Americans are indebted to Morris Cooke for his work under FDR on the Mississippi Valley report, the report on the Great Plains, his work as the first Administrator of REA, his later work on the settlement of the Mexican oil dispute and his work with Sidney Hillman on the National Defense Advisory Commission.

It is possible to mention only a tiny fraction of the major works performed by this gentle, kindly and creative believer in the democratic process, but those of us who knew him know that we, indeed all of the people of the world, have suffered a profound loss. We have lost more than a friend who was humorous and charming. We have lost a fine creative mind and a restless, untiring spirit that was throughout life dedicated to the creation of a rational, functional society in which man could have enough of the good and necessary things of life and continue to enjoy freedom and equality.

MORRIS L. COOKE'S EARLY CONTRIBUTIONS TO THE AMERICAN LABOR MOVEMENT

(By Florence Calvert Thorne)

Morris Llewellyn Cooke had many friends and devoted followers in the trade union movement as a result of years of direct and indirect contacts and services. It was in the period of World War I that his contacts with American Federation of Labor headquarters began. His apprenticeship in the machine industry had made him aware of Frederick Taylor's efforts to eliminate unnecessary production costs. When he became concerned with production under naval war contracts he began meeting national union leaders. He found them willing to cooperate constructively when consulted.

Samuel Gompers, president of the American Federation of Labor at the time, as a member of the War Administration at a top level, was contributing responsible leadership by encouraging affiliated unions to cooperate for national defense. There was growing awareness of the potentialities of unions for service to the Nation as well as to union members.

It was part of my responsibilities as assistant to Mr. Gompers to note individuals and organizations whose work had implications for labor and who were disposed to consider labor experience and welfare. Mr. Cooke was then ardently promoting more efficient management policies generally and specifically on critically necessary war production. He accepted as basically sound Taylor's emphasis on accumulating factual data for the determination of policies and decisions. He urged that the value of time and motion studies would be increased by making them in cooperation with producing workers. Such cooperation came more readily when growing out of understanding the value of economies in production. With equal clarity of vision, Mr. Cooke was promoting the development of vocational training for managers as members of a profession. Approach to these objectives was along two roads: Organization of the Taylor Society for discussion of Taylor's methods and their application, and by promoting academic facilities at the graduate level for the professional training of engineers and others preparing for management positions. Mr. Cooke was active in both. There were two groups in the Taylor Society. One held that workers were human beings who wanted to promote their own welfare and could realize that their welfare was interrelated with that of the whole economy and society generally. The other group believed scientific management should be developed by management, and the workers required to conform to production orders. Several industries and Government agencies introduced time and motion studies without discussion with employees. Workers countered by denouncing scientific management as a heartless, slave-driving procedure for the purpose of undermining established standards of work and pay, and the substitution of practices derived by authoritarian procedure often based on inadequate factual area. Many craftsmen found that greater productivity by stopwatch methods was equated with less pay. Resolutions denouncing time study and the stopwatch as unmitigated evils were adopted by unions without reservations and as not needing further consideration.

During the year I was in the War Labor Administration I heard and learned more of developments to promote industrial management as a profession and as a necessity for larger production units developing rapidly. It was obvious the experiments of Taylor and his coworkers pointed the way to procedures and efforts for large scale production and would help focus attention on recording of experiences and on expansion of cost and production accounting needed for mass production industries.

I remembered a question posed by Dr. Robert Hoxie when he stopped to see me after serving as Chairman of the Commission on Scientific Management for the Federal Commission on Industrial Relations in the Wilson administration: "Why don't unions study 'scientific management' and learn to participate and direct developments for their own protection and advantage?" So when Morris Cooke asked me to arrange a meeting between Mr. Gompers and several engineers and members of the Taylor Society who wanted to know more about labor's industrial policies, I was eager for labor to cooperate. The conference held in New York City included five engineers. Discussion revolved around two developments—scientific management and corporate organization of large-scale industries. Mr. Gompers believed large-scale industry (or trusts as they were called then) was inevitable and not necessarily an evil. As a result of this conference, Mr. Gompers was invited to address the annual joint conference of the Taylor Society and a liaison committee of the American Society of Mechanical Engineers held in the Engineers Building. When Mr. Gompers' acceptance was announced, some of the older members of the profession felt a sacred tradition was being violated. Others, after hearing the head of the federation speak on workers' education, hailed the dawn of a new era.

Workers' education on lines developed at Ruskin College Oxford was sponsored by the federation in cooperation with the Workers Education Bureau organized by Charles Beard and Spencer Miller. Morris Cooke and Harlo S. Person, the executive director of the Taylor Society, made that organization a forum for discussion of union experience with scientific management and experiments to increase production without detriment to quality standards. More cooperative developments for efficient production followed as Otto Beyer and Bert Jewell extended union-management cooperation to the railway industry.

Union cooperation, with professional groups for developing the tools and methods of cooperation on production continued under President Green who succeeded Mr. Gompers to the presidency of the American Federation of Labor. As Mr. Cooke and kindred engineers uncovered the wider aspects of industrial planning there were more opportunities for unions to contribute constructive experience and cooperation such as Giant Power and various other public power projects. Power has always been a conditioning factor of civilization and its wise use for the benefit of the greatest number of projects and groups leads to lasting progress. Out of these efforts more unions concerned sought and obtained representation in industrywide policymaking organizations. Morris Cooke, active in this field, consistently urged inclusion of the larger aspects of human welfare in industry planning and consultation between groups concerned when policies affected their welfare. The increasing complexities of industrial organization made these practices essential to justice as well as to better management.

As observed from federation headquarters, the engineering work of Mr. Cooke was characterized by intense concern for better procedures and sound principles on the material side of industrial production and illumined by an overriding concern for their repercussion on the human beings affected. As an apprentice in the machine industry he was concerned for Taylor's failure to advise with his workers as well as to protect Taylor from too great humiliation due to unjust abuse and attacks from workers whom he neglected to keep informed. Morris Cooke relied on consultation and education as the best methods for good human relations. He was a pioneer in organizing the Taylor Society with its bulletin as the agency for educating management to early approaches to scientific management and the joint conference with the American Society of Mechanical Engineers to keep engineers informed. Later he had joint responsibility in organizing the International Management Bureau located in Geneva to collect experience and make it available internationally.

He was instrumental in the preparation of the report on the 12-hour day in the steel industry which President Harding submitted to the steel conference he invited to the White House to consider transition to the 8-hour day.

He was one of a small group Mr. Gompers asked to advise him on how to have available research information on the proposals to be considered by the U.S. labor representatives to the first annual conference of the International Labor Organization. That was before the U.S. Senate denied the U.S. participation in that organization whose charter Mr. Gompers had helped to draft.

The challenging work of Herbert C. Hoover for relief for European war victims and as Food Administrator rallied a number of engineers to his leadership and resulted in the Federated American Engineering Council of which he was president. Mr. Cooke and a number of members of the Taylor Society were in this group. The council initiated a number of research studies headed by that on waste in industry. This study allocated responsibility for wastes in production equally to management and labor. The council did the spadework in establishing principles which guided reorganization of the Department of Commerce beginning

with standardization and simplification of products for competitive markets. Mr. Cooke's pioneering work and services in these various capacities furthered the practice of consideration of human values involved in procedures and plans. This emphasis was inherent in his philosophy of life.

As I think over his many interests and dynamic energy, I remember the comment of a young man helping on the program to include business administration in academic studies: "Mr. Cooke is an important public citizen ranking second only to President Wilson." Certainly his ability to detect trends and to distinguish key problems, as well as the will to do something about them by rallying those concerned for cooperation to deal with them, earn him honor for distinguished service. He was a man of integrity and high value to his fellow men.

HE CARRIED DREAMS TO ACCOMPLISHMENT

(By David Cushman Coyle)

Morris Llewellyn Cooke was of the highest type of free engineer. He was free to dream *of improvements* in human life that could be achieved by the bold use of means that were beyond the grasp of reactionary minds such as those in control of the electric utilities. In addition, he had the personality and the untiring energy to inspire as well as charm the men of political power who could muster the resources for carrying his dreams to accomplishment. He had the faith that moves mountains, and the capacity to pass on that lifegiving faith to his many enthusiastic friends.

The Cooke project that grew to the most conspicuous success while he was still alive to observe it was rural electrification. The roots of REA reached back to the early 1920's when he worked with Gov. Gifford Pinchot, of Pennsylvania, on a giant power project, for a grid to serve both town and countryside. Their studies convinced them that farmers would buy enough current to pay for rural lines, if correctly engineered and financed. Then in 1931, when F.D.R. was Governor of New York, he appointed Morris Llewellyn Cooke to conduct a study on the cost of delivering electricity to farmers. In this work, the friendship was established between these two men that later made possible the founding of REA as well as many less conspicuous public services of that era.

The technical contributions of this free engineer to rural electrification were of crucial importance. He saw, from the first, that the point for a breakthrough had to be in lowering the price of electricity and he had the imagination to see that it could be done. He did not fear to solve the problem of low interest by calling for Government investment. Beyond that, he was not afraid of boldly redesigning the conventional electric lines and equipment so as to cut their cost in two. When the private companies still dug in their heels, he was free to turn to cooperatives. So by faith, courage, and sound engineering, he and his men broke through into a new field of service that has already transformed rural life in the United States.

Other projects, such as the Missouri Valley Authority, may seem now to have been defeated. And yet, who knows? This man planted many seeds, some of slower growth than others yet no less having life that some day may grow and flourish.

Meanwhile, there are many people still living, who sooner or later will grow old, and who through all the chances of life will continue to draw strength and courage from the living memory of Morris Llewellyn Cooke.

AN ENGINEER OF MOVEMENTS

(By Benton J. Stong)

Walking across the Capitol Grounds one evening, after a meeting on Missouri River Basin development, Morris Cooke told me a story which ever after characterized him in my mind.

A fishworm had emerged from the ground one morning to find a sunny day, the grass sparkling with dew, and apple blossoms, dogwood, azaleas, violets, and other early flowers in bloom.

"My," said the worm, "this is a wonderful world."

As he enjoyed the scene, a second worm emerged an inch or two away, surveyed the situation and exclaimed:

"My, this is a wonderful world."

Struck by the coincidence of the identical remarks, the first worm turned to his new companion and commented that they should get on well—they had made an identical comment.

"We should," said worm No. 2, "for you are the other end of me."

Morris Cooke believed this was applicable between men around the world, between resources, and between men and resources. Hence, everything was of interest to him, and every useful activity was worthy of any contribution he could make to it. Whatever his most useful role, he was prepared to undertake it.

My first meeting with Morris L. Cooke was at the old Resources Planning Board. A newsman new to Washington, I had been told by aids to other executives to come back when there was a press conference. But Mr. Cooke took an hour to answer my questions, cross-examine me about the Tennessee Valley, where I had resided for several years, and to recount one of his own experiences with a pioneer attempt at rainmaking as a reporter for the Rocky Mountain News.

There was a drought and arrangements had been made for a balloonist to go aloft and dynamite clouds. Cooke and a Denver Post reporter were to go up with the balloonist. With a little careful planning, Cooke managed to arrive after the takeoff. The balloon took an unexpected course when it got aloft and finally landed on an isolated mountainside. For several hours, Cooke relayed his paper news of the misadventure and the failure of the dynamiting to produce rain while the Post's reporter was still "up in the air." Back at the office, Cooke was praised for his "scoop" and good discretion, instead of being reprimanded for lack of valor. He remained skeptical of rainmakers for life, "in defense of my youthful judgment," he explained.

Mr. Cooke's interest in getting people to participate in civic affairs—a personal crusade be conducted especially vigorously within his own engineering profession—he dated back to college days when he was sent as a poll watcher to a waterfront precinct in an eastern city. After a pummeling, he was tossed out of the polling place, convinced that it would take more than a lone college student to cleanse election practices in the city. The same conclusion he found applicable to other movements.

Not the least of Mr. Cooke's abilities was to maintain friendships which permitted him to practice a little welcome "management engineering" in each of their lives, involved them with others in useful undertakings, thus achieving the concerted action by groups of individuals which he considered essential to get results.

FOE OF MUNICIPAL CORRUPTION

(By William O. Lichtner)

The passing of Morris L. Cooke was a source of deep sorrow to me. He was a friend as well as a professional colleague over a period of some 50 years.

In 1909 I met Mr. Cooke through Dr. Frederick W. Taylor, with whom he was intimately working in promoting the scientific management concept for industry and the operation of public works projects. During the ensuing years Mr. Cooke had me serve with him on several very unusual and important projects which only Mr. Cooke seemed to have the faculty and personality to handle successfully. Such a project occurred when he became Philadelphia's director of public works during the regime of the reform mayor, Rudolph Blankenburg. This project proved to be a classic fight against dishonesty, the power of money, and the type of futility in municipal administration through which everybody suffers.

Another high point in Mr. Cooke's career occurred when he was asked by President Franklin D. Roosevelt to "head up an American technical mission to Brazil." The group consisted of nine specialists and I was honored to be asked to serve as the chief of technicians. This mission was unique in that the project being of mutual economic interest on the part of Brazil and the United States of America it was conducted through President Vargas of Brazil having a counterpart Brazilian technical mission manned entirely by native technicians with the intimate background and experience of Brazil's needs.

This project was one of imminence and extreme gravity due to the submarine attacks on shipping between Brazil and the U.S. ports which seriously influenced the conduct of the war against the Axis powers. It also affected drastically the internal economy of our good neighbor.

The mission accomplished its purpose. The basic objectives of the mission as outlined in a White House statement were: (1) To increase local production of essential products; (2) to convert local industries to the use of substitute raw materials; (3) to maintain and improve transportation facilities; and (4) to lay the foundation for a long-range strengthening of Brazil's whole industrial economy.

Mr. Cooke's many other interesting achievements are replete with successes so characteristic of him. He was always willing to listen to and try new ideas, and was a liberal in every sense of the world. He fought for his convictions in a wide variety of business, engineering, and political issues.

I shall always cherish in gratitude the memory of my years of friendship with Morris L. Cooke.

FOE OF THE TIDELANDS BILL

(By Edward A. Harris)

The death of Morris Llewellyn Cooke brings back memories of my most interesting years as a Washington correspondent. For while it was never disclosed before, he was one of the leading figures behind the scenes in the determined inquiry into the tidelands oil situation.

At stake in this inquiry were billions of dollars worth of oil in the so-called marginal sea extending from low tide to the 3-mile limit. This immense wealth could be conserved underground for the future needs of the Nation; it could be partially exploited under Federal control to prevent drainage loss with its proceeds used for schools and other worthy causes. Or, if these tidelands could be declared the property of the States off whose shores they are located, then the prospects were greatly increased of private oil operators reaping huge profits from their development.

Morris L. Cooke had long been a close student of the politics of oil, starting with his engineering experience as the reform head of the public utilities system of his home city of Philadelphia beginning in 1912. Franklin Roosevelt chose him to represent the United States in the settlement of the Mexican-American oil disputes in 1942. He knew the chief personalities in American oil, and had some among them tagged as "bad actors" in his book of what makes men tick.

Never a seeker after publicity, but a stanch champion of conservation of natural resources, Mr. Cooke was a colonel be-

hind the scenes in the tidelands oil fight. He cataloged the personalities in the oil lobby in that fight. And when one of their leading members was nominated to the strategic post of Secretary of the Navy, he went into action in his quiet but most effective way.

His files, his catalog of men and events, his wide acquaintanceship with sources of facts were put to use in mustering a substantial record which the chairman of the Senate Confirmation Committee, the late eminent Senator Charles W. Tobey, had put at his disposal. It was an important factor in the investigation that resulted in the withdrawal of the oilman's nomination to the sensitive post.

While the immediate victory was gratifying, the larger issue for which Mr. Cooke fought, that of conserving the tidelands for all the people in future generations was not won. But a man is not judged by his victories alone. So long as there are Americans who fight vigorously for just causes, a battle may be lost here and there but in the end the war will be won—the war to save the Nation from predatory interests and thus insure its endurance as a dynamic democracy.

I cite this instance of high-level operation by Morris L. Cooke as one facet of a rich life spent entirely in the public interest. As the reporter assigned the task of digging out the facts and writing them for the public, I went to reliable sources, and Mr. Cooke was a most valuable one. I can see him now, pacing up and down the length of his sitting room in his suite in the Hay-Adams, a sheath of papers in his hand, indignant to the point of anger at the attempt of a handful of giant corporations seeking to capture the great oil wealth of the Nation through the actions of their hired lobbyists.

Watchful, patient, knowing, the trained man at work on public issues, dealing with these issues at the top policy level where broadest results could be obtained, Morris L. Cooke lived a quiet life of great effectiveness for many years in Washington. His rare counsel and solid advice will be sorely missed in these trying days by a circle of leaders. His enduring friendship will remain with us for many years to come.

Builder of Good Will With Mexico

(By Ralph Kaul)

I was assistant to Morris L. Cooke when he served as the U.S. Commissioner, appointed by President Roosevelt, on the United States-Mexico Oil Commission.

This Commission in 1942 settled by friendly negotiation the long standing dispute between the United States and Mexico and provided reasonable compensation to the expropriated American oil companies. The settlement coming at the beginning of World War II was a major breakthrough in establishing strong friendly ties with Mexico which have endured to this day. Morris Cooke deserves the credit.

In my experience I have never known a person to serve the public with greater courage, skill, and devotion. When problems seemed unsurmountable, he was always confident and cheerful and a source of inspiration to his associates and staff.

Our Nation has had many outstanding public servants. No one more deserves a lasting place in our hearts and memories than Morris Llewellyn Cooke.

A Friend of Puerto Rico

(By Judson C. Dickerman)

When in 1912 as director of public works, city of Philadelphia, Pa., Morris L. Cooke came to negotiate contracts with privately owned public utilities, he found their policies and practices not in the public interest and in his opinion restricting the useful progress of the industries. He soon found those policies were general over the Nation. From then on, he devoted a goodly part of his energies to advance the widespread beneficial use of electric power.

When private corporations were reluctant or unable to take adequate measures, he encouraged publicly owned enterprises to take over. The writer was frequently associated with Morris L. Cooke in many such activities from 1912 up to his death in 1960.

The late President Franklin D. Roosevelt, considering the problems of administration of the island of Puerto Rico, found a public-spirited, farsighted engineer, Antonio Lucchetti, operating a small electric utility system under the island government in conjunction with irrigation facilities. Lucchetti was pressing to enlarge the system to utilize to a maximum the island's potential water-power resources and to ultimately provide electric service to the entire island as one publicly owned utility.

The President appointed Morris L. Cooke and Frank H. McNinch, then chairman of the Federal Power Commission, to investigate the existing development and the feasibility of Lucchetti's program. These gentlemen sent the late Roy Husselman and the writer to the island in January 1934 to study and report. The two engineers reported favorably as to the existing development, the advantages to the island of expanding the electric service and the necessity of acquiring some supplementary steam electric power. Messrs. McNinch and Cooke accepted the report.

An immediate result was the purchase by the island authority, without controversy, of the privately owned steam electric plant and system in the city of Ponce. In 1941 the Puerto Rico Water Resources Authority was set up within the Puerto Rico Department of Public Works to operate and expand the publicly owned hydroelectric power and irrigation services. In 1944 that Authority purchased the electric systems serving Jan Juan and vicinity and Mayaguez and soon after acquired the few locally operated small plants, to complete an islandwide system, competently and progressively managed, to be an important factor supporting the island's growing prosperity.

While remaining much in the background, Morris L. Cooke maintained an active interest in the continuing political and economic development of Puerto Rico and its water resources authority. In their later years Mr. and Mrs. Cooke spent several winters in Puerto Rico where both found much of interest. Thus Puerto Rico benefited by Morris L. Cooke's clear perceptions, advice, and influence up to the time of his death, as have many other situations, nationally and internationally.

Builder of International Good Will and Peace

(By Dewey Anderson)

Morris Llewellyn Cooke was a rare personality. A trained engineer, he was forever innovating, reaching out into new and unknown fields, seeking the right answers to besetting public problems that required solution in order to strengthen democratic institutions. His mind was ageless, and as each new day brought with it a new set of problems he applied that keen intellect to finding the right way to put men and institutions to work under policies beneficial to the public.

Others will tell of his pioneering leadership in the fight for low-cost energy to power the wheels of our emerging American industry at a time when engineers were scarce, who would champion the entrance of the Government into this field to yardstick the activities of the private utilities.

Or his conception of "catching the raindrop where it falls" to prevent floods and devastation in a natural way, and to harness the falling waters in a river valley for the benefit of all who reside there, an idea that took concrete form in the establishment of the TVA and the Soil Conservation Service.

Or, his persuasive voice convincing that strong man of the first New Deal cabinet, Harold Ickes, to support his petition to the President to create the REA.

Any one of these achievements would accord the ordinary leader his place in our social history. But for Morris Cooke they were routine.

On the international frontier he also displayed his unusual combination of wisdom, persistence, integrity, true gentlemanliness and diplomacy. These rare qualities were early recognized by Franklin D. Roosevelt who have become well acquainted with Mr. Cooke during the First World War, and later when he appointed Morris Cooke to the giant power commission of New York.

I know something of the service he rendered our second war effort, having served as Chief of the American Hemisphere in the Board of Economic Warfare. It was our duty to obtain the maximum cooperation from our Latin American neighbors. Brazil, with its tremendous raw materials, its strategic air flight location, and its growing industrialization, was the key to this. Morris L. Cooke was ideally suited to the task of using that key. He had settled the Mexican-American oil dispute in 1942, and received the highest award of merit that good neighbor had to offer. He was an engineer who looked at problems through trained eyes.

Mr. Cooke was chosen to head an industrial mission to Brazil and the results are written into our diplomatic history. Out of it came a complete accord and fullest participation between the two countries, a cementing of friendship that has carried on to this day.

When the Second World War was drawing to a close, Morris L. Cooke was busy meeting with groups and individuals to find the way to continue the allied collaboration which had made the prosecution of the war a success. His meetings with the French leader Monnet led to Mr. Cooke becoming a champion of the union of European economies. One of the French leaders came all the way from France to meet him so recently as his final illness, arriving at the hospital the last day of his life. The distinguished Frenchman's grief at the passing of this understanding friend was a warm tribute to the power of that friendship with the French Republic.

Always seeking practical ways to attain peace and preserve it and to promote freedom and democracy among men, Morris L. Cooke was in the first group that discussed what became point 4 in the inaugural address and international program of President Harry S. Truman. In the first comprehensive treatment of that topic, the bold new program series issued by Public Affairs Institute, he wrote the study "Groundwork for Action," a description of the nature and extent of the task of aiding the underdeveloped two-thirds of the world to join with the more industrialized nations in their march toward economic and political freedom.

He continued this abiding concern for our less fortunate free world neighbors to the very end of life. His pen and his person were ever available in case of need. Thus, in the serious need of India for food grains, he was among the handful of leaders who wrote, worked, and prevailed upon the administration and the Congress to provide that grain. He formed and led a Committee of One Hundred Americans in the formulation of peace programs, and stimulated widespread interest in effective disarmament and cooperation to advance the participation of the free world countries in the economic development of the less privileged nations.

Morris Llewellyn Cooke lived a long and useful life. He continued that usefulness

in a remarkable degree right up to the surrender of its spark on his last day with us. Within the month of his death he paid a final visit to Washington, held court in his Hay Adams suite of the men and women who had led this Nation out of the trough of the depression and built the New Deal institutions by which we now live. It was not a court of reminiscence but a discussion of new frontiers of mind and action just ahead. Ever young, he died at the age of 87, a tribute to the best America has to offer its people, a warm friend and loyal colleague in the struggle for better living for us all.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. MURRAY. I yield.

Mr. CLARK. Mr. President, I should like to join my distinguished colleague from Montana in the tribute he has paid to the distinguished Philadelphian, Morris Llewellyn Cooke. Mr. Cooke was one of the great engineers of our country. He was a member of the cabinet of Mayor Rudolph Blanckenburg of Philadelphia as long ago as 1911. He did everything possible during the period of his service to bring the public works and engineering programs of our city out of a very bad and obsolete situation. When he resigned as director of public works, Philadelphia had been well served.

Mr. Cooke was an outstanding follower of Theodore Roosevelt, a great "Bull Mooser." He served actively in the ranks of the "Bull Moosers" until the early days of the New Deal, when he became an ardent disciple of Franklin Delano Roosevelt. He came to Washington, D.C., and did a magnificent job. His influence was far beyond the positions he held.

All of Philadelphia and all of Pennsylvania join the Senator from Montana in the tribute to this distinguished member of our Commonwealth.

Mr. President, I ask unanimous consent to have an editorial which was published in the Washington Post and Times Herald of March 9, 1960, in tribute to Mr. Cooke, printed at this point in my remarks.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

MORRIS L. COOKE

The death of Morris Llewellyn Cooke at the age of 87 must have brought not only a sense of personal loss but a keen nostalgia as well to many who knew him in his long and devoted career of public service. He was as much a Washingtonian as a resident of the Philadelphia suburb which was his home and to which he retired in his final years. During the 1930's and 1940's when he was active and influential in the Capital, he was an exemplar of the very best qualities of the New Deal and perhaps its leading philosopher in the area of conservation and resource development.

Morris Cooke was so modest and quiet a man that few realized the extent of his influence in the Roosevelt administration. An outstanding engineer, he became director of public works in Mayor Rudolph Blanckenburg's reform municipal administration in Philadelphia in 1911. Later he served as a member of the New York State Power Authority during the Roosevelt governorship and became Chairman of the Rural Electrification Administration under President Roosevelt in 1935. He played an important role in the development of the TVA concept.

An ardent exponent of public power, Mr. Cooke had personal integrity, professional competence, and sound judgment that commanded the highest respect among private power advocates. He was the natural choice to direct the Water Resources Section of the National Resources Board in the Roosevelt administration and the Water Resources Policy Commission in the Truman administration. His enthusiasm and idealism no less than his extraordinary understanding of resource problems made him an invaluable contributor to the growth of his country.

Mr. CLARK. Mr. President, I thank my friend from Montana for yielding to me. I invite the attention of my friend from Montana to the fact that my colleague from Pennsylvania desires to have the Senator from Montana yield to him.

Mr. SCOTT. Mr. President, will the Senator from Montana yield?

The PRESIDING OFFICER. Does the Senator from Montana yield for a question?

Mr. MURRAY. I yield.

Mr. SCOTT. Mr. President, I ask unanimous consent that the Senator from Montana may yield to me so that I may speak, not in the form of a question, but affirmatively, with respect to the death of Mr. Cooke.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Pennsylvania? The Chair hears none, and it is so ordered.

Mr. SCOTT. Mr. President, while I did not know the late Morris Llewellyn Cooke well, he served in the same cabinet under Mayor Blanckenburg with my uncle, the city solicitor of the city of Philadelphia. He was a great man, a distinguished citizen, and an outstanding engineer. I should like to associate myself with the sentiments of those who have spoken and to express the grief of my city and of my Commonwealth at the passing of one who contributed so much in civic well-being to all the agencies and causes which he served.

TRIBUTE TO BRIG. GEN. FRANK T. HINES

Mr. CASE of South Dakota. Mr. President, one of the great public servants of our generation passed away yesterday. I refer to Gen. Frank T. Hines, who for many years was Administrator of the Veterans' Bureau, later the Veterans' Administration. He also served as our Ambassador to Panama for a number of years. He was called upon during his life to fill many posts of honor and responsibility. He served with credit to himself and to his country.

I regard it as one of the privileges of public service to have known General Hines and to have been associated somewhat with his activities, when I served on the Subcommittee on Appropriations for Independent Offices in the House of Representatives, which subcommittee dealt with appropriations for the Veterans' Administration.

Mr. President, I ask unanimous consent that there may be printed in the RECORD, following my remarks, the newspaper article published in the Washington Post and Times Herald this morning in tribute to General Hines.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington (D.C.) Post, Apr. 5, 1960]

GENERAL HINES, FIRST VA HEAD

(By Alan L. Dessoff)

Brig. Gen. Frank T. Hines, U.S. Army, retired, head of the Veterans' Administration under five Presidents and the man who got the troops home after World War I, died Sunday of bronchial pneumonia at Mount Alto Veterans' Hospital. He was 81.

General Hines was once described by J. Edgar Hoover, Director of the Federal Bureau of Investigation, as "the one man in Washington whom everybody respects" because "he has ability and never played politics."

Sumner G. Whittier, present Administrator of Veterans' Affairs, was by coincidence in Salt Lake City, General Hines' birthplace yesterday, when he learned of the general's death.

"The State of Utah and all of America lost an outstanding citizen and patriot," Whittier said in a statement, adding, "General Hines served his fellow men with distinction in a long and useful life."

President Warren Harding picked General Hines to head the Veterans' Bureau in 1923. Previously, the agency had been under severe criticism and touched by scandal as it was directed by as many as three men at one time.

In 1930, when the Bureau was consolidated with other veterans' relief agencies into the Veterans' Administration, General Hines became its first administrator and served until 1945.

SET UP REGIONAL AREAS

Working with "cold, deadly efficiency"—he signed his initials, never his name during 12- to 16-hour working days and kept a seven-sided appointment calendar on his desk—he divided the VA into district and regional offices for the convenience of veterans around the country.

It was largely due to his efforts that Congress permitted a veteran of any war to be hospitalized without regard to the nature or cause of his disability.

General Hines also proposed that a man entering military service know exactly what compensation he or his dependents would receive in case of his death or injury, under a uniform policy by which all veterans would have equal consideration relative to their needs.

At the end of World War II, General Hines was in charge of administering the Servicemen's Readjustment Act of 1944, known as the GI bill of rights. He controlled an agency with scores of hospital facilities, more than 50,000 employees, and over 100,000 claims from veterans awaiting action.

ENLISTED AT 19

General Hines rose from private in the National Guard. He enlisted in Utah at 19 and served in 14 Spanish-American War engagements. He was recommended for the Medal of Honor for bravery in action in the Philippines but it was never voted by Congress.

Despite his early record, his first application for a commission in the Regular Army was rejected because of his age. He finally got it in 1901 and as a captain went to Europe in 1914 as a technical adviser for the Bethlehem Steel Co. working on Greek coastal defenses.

When World War I broke out, he headed home from Athens but the War Department stopped him in Rome and ordered him to evacuate Americans from Italy. He returned 3,100 citizens to the United States in 2 months.

MOVED 2 MILLION MEN

His major contribution during the war was organization of a transportation system that

moved 2 million soldiers to Europe in 18 months and got them home again in 8 months.

It was estimated that his return of the men earlier than expected and his readjustment of transportation rates with Great Britain saved the Government more than $130 million.

It was during this period that General Hines first won J. Edgar Hoover's respect. Hoover, in charge of extraditing anarchists from the United States, had difficulty getting a ship, and called General Hines, who ordered one.

"You put them on the ship," the general told Hoover, "and I'll take them out of the country."

Commissioned a brigadier general in 1918, General Hines retired from the Army in 1920 but returned to public life 3 years later on President Harding's request.

After leaving the Veterans' Administration, he served as Ambassador to Panama for 3 years. He then moved to California, but returned here to serve until recently as a director of the Acacia Life Insurance Co.

He is survived by his wife, Nellie, whom he married in 1901, of the Towers Apartments; a son, Frank T., Santa Monica, Calif.; a brother, Brig. Gen. Charles Hines, U.S. Army, retired, 2800 Quebec Street NW.; and a sister, Mrs. Frank M. Barrell of Millbrae, Calif. Services will be held at 2 p.m., Wednesday, at Fort Meyer Chapel, with burial in Arlington Cemetery.

Mr. HILL. Mr. President, I should like to associate myself with the remarks of the distinguished Senator from South Dakota in his tribute to the late General Hines. I knew General Hines well. I had a lot of contact with him. I worked with him on many occasions on many matters. I never knew a finer, more devoted or more faithful public servant. He was a great soldier, a great patriot, and a great American.

CONSOLIDATION OF INTERNATIONAL COMMUNICATIONS—THE KEY TO PEACE

Mr. MUNDT. Mr. President, the Advisory Commission on Information has just filed its 15th report. I wish to call this report to the attention of the Members of the Senate because I believe that it is a forward-looking document, outlining guideposts in foreign relations, which may well channel our information and cultural relations activities into new areas, with new programs, and new management.

I was highly gratified to note that the report suggests that the time has come to consolidate all the foreign cultural, education, and information programs in one agency of Cabinet status. The report suggests that this total combined effort should be conducted as a single operation, involving an overall public relations project.

The committee stated:

> To meet the competitive ideological and propaganda challenge of the future, the time has come for the United States to consolidate all the foreign cultural, educational, and information programs in one agency of Cabinet status. The purpose is to insure maximum coordination and unified direction of the total U.S. communications effort.
>
> Although U.S. foreign information, education, and cultural programs have shown much improvement, their impact, from a total communications point of view remains difficult to discern when the U.S. information and education program is evaluated, country by country. Consolidation of all U.S. foreign communications in one agency will result in more unified and comprehensive planning, more economical use of what are essentially scarce resources, and a cumulative impact that will be more apparent. Previous bureaucratic divisions and differences should now be subordinated to the common purpose of achieving mutual understanding between the people of the United States and the people of other countries, in this most critical area of international communications.
>
> Communication techniques in reaching foreign audiences are essentially similar. Combining the diverse cultural, information, and educational programs will give belated recognition to this fact. It will enable the United States to enter into the competitive communications struggle in 1960 with a strengthened capability tested and matured by its past experiments and experiences.
>
> The Commission believes the United States has the brains, the ideas, the techniques, and the resources that are necessary to meet this challenge successfully today and in the future. The Commission believes, however, that the essential task is to marshal and organize resources more effectively and to release creative ideas and energies that will be required in the long contest that looms ahead. If the ideas of freedom are to prevail they must be mobilized, organized, and communicated to the people of the world.

The importance of information and cultural relations programs has never been more clearly outlined in the history of our Nation than at present. As this report indicates, the quantity of such programs from the Communist orbit is increasing sharply, by leaps and bounds, especially from Red China. The challenge to the United States is greater, and will continue to grow.

We cannot fail to provide all the programs we need to meet this challenge. We cannot afford to sustain a dormant effort, without creating new methods, new ideas, and new techniques. Upon this project of communicating with the peoples of the world, and of projecting the truthful image of America depends our national safety.

In that connection I wish to salute the Senate on the fact that, after only 2 days' deliberation, it recently approved the expenditure of $100,000 by the Voice of America to purchase from commercial stations in Georgia and Florida programing time with which to beam Spanish language broadcasts to the oppressed people of Cuba. Today in conference the conferees on the supplemental appropriation bill agreed that this money should be utilized for this purpose, and should be taken from the unobligated balances which, happily, the Voice of America has available to it at this time.

Our great defensive strength lies not alone in our great weapons programs, or in our missiles and atomic weapons. Our real strength rests in the faith, confidence, and friendship which the peoples of the free world—and many of the satellite countries—have in the United States and its people.

The job we have to do is to make sure that such confidence remains unshaken, and that such trust is never violated.

I agree with the observations of the Advisory Committee which points out that to maintain a strong program does not necessarily mean that we have to match the quantity of Communist propaganda, but that we should outdo them with quality. Money may very well be far less important than method in achieving our objective.

If we want the quality of our information and cultural relations programs to improve, we must search constantly for new methods and techniques for handling them.

The friends we have abroad will remain constant if we continue to inform them of our purposes. New friends will be won when we find how best to approach them and when we find what their interests are. This is a continuing challenging and existing task.

I am not making this statement as one of criticism of the administration of the present programs. Indeed, I have nothing but high praise for much of their work and most of the administrators of them. We may have been more fortunate than we deserved in getting people of such high caliber to man them.

This is true, also, of the Advisory Commission which wrote the report to which I refer. I list the names of members of the Advisory Commission for the information of the Senate. I am sure that the names of most of these distinguished Americans are already well known in this body.

Mark A. May, chairman, director, Institute of Human Relations, Yale University, New Haven, Conn.

Erwin D. Canham, editor, the Christian Science Monitor, Boston, Mass.

Sigurd S. Larmon, chairman of the board, Young & Rubicam, Inc., New York, N.Y.

Philip D. Reed, New York, N.Y.

Lewis W. Douglas, Sonoita, Ariz.

For some time I have been talking about more coordination of our cultural relations, exchange of persons, and information programs. Considerable coordination has taken place, but I am sure no one will say that the job is ended. Such coordination must be aimed at strengthening the programs. Often, we find in government that coordination merely means creation of some new superstructure of administration, with little change in programs, or improvement in the agency output. These cultural contacts are so important that we must give them every support, without draining their appropriations for administration.

That is why, during the past year or two, I have been picking at the idea that perhaps these programs need to be placed in a separate agency, at Cabinet level, with Cabinet status, where their full importance can be appreciated, and their potential expanded.

Early last year, in an address before the third plenary session of the National Conference Institute of International Education here in Washington, as author of the Smith-Mundt Act, which established the overseas programs of information, suggested that the time had come when we should consolidate all of our programs of international human relations into one department of Cabinet-level status. Later I authored an

article for the July 1959 issue of the Publice Relations Journal entitled "A Department of International Public Relations for the U.S.," in which I spelled out the importance of merging our programs of information, educational exchange, and cultural relations into a single operational agency. The favorable response to this article from distinguished experts in the field of public relations was most gratifying and encouraging. Based on the reaction to my article I counseled with Dr. Mark May; and I would like to think that my conversations with this distinguished expert and leader in the field of public relations on human relations have played some small part in the genesis of the recommendation contained in the 15th Annual Report of the Advisory Commission on Information. I enthusiastically concur with the Commission's conclusion that the challenge of the sixties demands the ultimate coordination of all programs designed to communicate the image of America to citizens of other nations.

I firmly believe that this will not only give us increased efficiency, but will provide better results with better economy.

It seems to me that this proposal merits the special consideration of the Senate, especially since the advisory committee, which gave considerable study to the matter, gives rather strong endorsement to the plan.

Many hearings have been held on the cultural relations and information programs. Perhaps one of the most useful was the so-called Fulbright-Hickenlooper hearings back in 1952. I would suggest, however, that the findings of 8 years ago may not be totally valid today and that some extension should be made on them.

Later, independent inquiry was made by Government commissions outside of Congress, but these, too, are now 6 or 7 years old. This field is one which changes rapidly, and which constantly poses new and involved problems. Further investigation into the merits of proposals regarding them are now in order.

I do not have in mind today introducing any resolution calling for the establishment of a new department at this time, or any resolution calling for some special investigation or new study; but I think this is a subject which requires the attention of Congress. It is a field in which careful studies might be valuable.

I believe that we have in the Senate such a mechanism for making an impartial, nonpartisan, and objective study and I hope that we can utilize this mechanism for positive operations without delay.

The Government Operations Committee of the Senate, of which I am ranking Republican member, recently established a subcommittee under the chairmanship of the able Senator from Washington [Mr. JACKSON]. The subcommittee is functioning for the purpose of studying the policymaking machinery of Government. At its inception, the purpose of the subcommittee was set forth as being an impartial, nonpartisan study group. This was emphasized many times by Senator JACKSON, both on the floor of the Senate and in our committee sessions, and at the time the resolution creating the subcommittee was adopted.

So, I think that we have already established the means of making such an inquiry as I have outlined. We have by now recruited an excellent professional staff.

Therefore, I am making the suggestion that the committee to which I refer, the Subcommittee on Policy Making Machinery, undertake to interview experts or to hold hearings on this subject. I am today sending a letter to the distinguished chairman of our subcommittee, the Senator from Washington [Mr. JACKSON], pursuing this request.

I do not believe that any study has been given to the proposal, other than that which the advisory group has made. I am sure that there are many experts in this area whose opinions and suggestions have not been sought. There are some additional ramifications and proposals for expansion to include other programs in such an agency, and all should be studied in the atmosphere provided by our subcommittee. We should all approach this entire problem with an open mind. We must evolve the optimum administrative machinery, by which we can get the best results, with a minimum of Federal expenditures.

The ideas of all of us change as the times change. New circumstances call for new answers. For instance, I was once very much opposed to the idea of moving the USIA out of the Department of State because I felt that we would lose something in the way of coordination of policy. Now, I do not feel that these fears have been justified by developments, though I think coordination can be further strengthened and improved.

Perhaps the reason USIA has functioned so well is due, not to any special machinery of operations so much as it is due to the high quality of administrators which it has had and the unofficial coordination which has taken place. The present head of USIA, George Allen, serves his country well, and administers his agency most capably in this his second tour of duty. He deserves the commendation of Congress for his great success.

I have not inquired of George Allen what his thinking is on the special proposal I have made for putting all these functions in a Cabinet level agency. I am sure, however, that he feels that USIA has not filled its potential—that there are gaps to be filled—that new techniques need to be acquired—and that bigger jobs lie ahead as the Soviet cold war effort expands at a greater percentage of increase than even its missile program.

The Communist challenge is a never ending one, and it reaches not only to our doorstep, but right into our country. The case of Cuba points up rather dramatically what inroads have been made. I was happy to have the Senate approve so rapidly the proposal I made to have special appropriations given to USIA to meet the situation in Cuba and to provide information programs which would give the people of Cuba the truth about our country and its relationships with them. I think this is an effort which will pay big dividends.

The case of Cuba also demonstrates what is needed in the way of coordination between our information programs, and other cultural activities, assistance programs, and overall aggressive techniques to combat the slander aimed at us or to help resolve the international tensions created by the Castro-led government.

We lack the flexibility to handle the critical situations resulting from dictatorial posturing of little men in big britches, when, like gadflies, they tease and taunt their neighbors, or take punitive actions against them. It is true that, because of our economic strength, we could bring the Government of Cuba to its knees. But that is not what we want. We want the Cubans to enjoy freedom and economic prosperity. We want them to have free speech, freedom to worship, a free enterprise system, and we want them to enjoy the advantages of good relationship with our own country, and with their Latin American neighbors. To convince them that is our aim, and that we are not an all-powerful giant trying to work our will through economic coercion or displays of force, requires skillful communications, proper approaches, and coordinated programs.

We have numerous programs around the world which can be brought into play. Most of them are highly successful, but, from the viewpoint of the foreign national with whom we are working, there is confusion and cross purpose. There are many Americans in these foreign capitals working toward common goals, but approaching them by diverse routes, with either unrelated or overlapping and sometimes even contradictory programs. To have our activities observed as stemming from one center, with one method or approach, and thus demonstrating unity, would do much to increase our prestige abroad, and bring better results to our efforts.

I could discuss at length some of the problems that arise abroad from lack of centralized guidance and coordination, but I believe that my purpose is best served here by merely pointing out the report of the Advisory Commission which reflects the thinking of experts on this question.

I see on the floor of the Senate the distinguished chairman of the Committee on Agriculture and Forestry, and a distinguished member of the Committee on Appropriations, the Senator from Louisiana [Mr. ELLENDER], who has probably traveled as much and has studied as hard in analyzing the various ramifications of our oversea activities as any Members of the Senate. I have heard him discuss publicly and I have heard him hold forth privately on the contradictions and duplications which occur. It seems to me that in our fighting the cold war through to victory, so that we do not become engaged in a hot war, we must coordinate our efforts to get the best results possible with the economic use of manpower and money.

Again, I wish to request that our subcommittee take this matter under study at once. I feel that it is of more urgency

than many of the studies which are contemplated or which have been taken thus far. It has the advantage of being an up to date, current problem, as well as being on the subject which is most pressing in the field of foreign relations. America is public-relations conscious. It is a special skill that has been most highly developed in our Nation. It is time that we used this special public relations knowledge to improve the image of America abroad, by winning the hearts and minds of people around the world, convincing them that we expect to live at peace, and that our total effort is toward that end. If our committee can develop special information and do necessary research which can help us in our deliberations on the worth of upgrading and coordinating the work of this special agency, the committee headed by the Senator from Washington [Mr. JACKSON] will have served a useful and constructive purpose.

CIVIL RIGHTS ACT OF 1960

The Senate resumed the consideration of the bill (H.R. 8601) to enforce constitutional rights, and for other purposes.

Mr. THURMOND obtained the floor.

Mr. RUSSELL. Mr. President, will the Senator yield to me, without in any way affecting his right to the floor?

Mr. THURMOND. I am glad to yield to the Senator from Georgia.

Mr. RUSSELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. PROUTY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I offer an amendment and ask that it be read.

The PRESIDING OFFICER. The amendment will be read.

The LEGISLATIVE CLERK. On page 16, line 9, it is proposed to insert the following:

After "(a)" insert "on account of race or color".

On page 16, line 11, after "(b)" insert "on account of race or color".

On page 17, line 16, after "(a)" insert "on account of race or color".

On page 17, line 18, after "(b)" insert "on account of race or color".

Mr. THURMOND. Mr. President, as an example, of the pitfalls encountered when concern for speed overshadows consideration for due process guarantees, I would like to refer briefly to one of the constitutional defects apparent in title 6 of the pending bill.

In his testimony during the brief period in which the Judiciary Committee was required to consider this legislation, the Attorney General testified with respect to section 6 that it had as its constitutional basis the 15th amendment of the Constitution. Mr. President, as is well known by Members of this body that particular section is as follows:

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

Mr. President, as any student of constitutional law knows, the language of the section is in negative terms. This particular amendment, the legitimacy of which is open to serious question, in no way justifies an affirmative course of action set forth in legislation by Congress. Any legislation which seeks to justify its existence must do so on two grounds. First, a prudent Congress must be convinced that there exists evidence that "the right of citizens of the United States to vote" is being denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. Secondly, the legislation must assume the character of negating this discrimination. In other words, the legislation must be negative in character as opposed to a positive approach or affirmative course of action. This has been summarized in 18 American jurisprudence, elections, page 26, paragraph 8, as follows:

The power of Congress to legislate at all upon the subject of voting at State elections rests upon the 15th amendment. The legislation authorized by this amendment is restricted. It extends only to the prevention by appropriate legislation of the discrimination which is forbidden by the provision. Congress has no power to punish the intimidation of voters at purely State elections where the conduct complained of is not grounded upon race, color, or previous condition of servitude.

Prior to the adoption of the 14th and 15th amendments, the field of voting, so far as State elections were concerned, was reserved exclusively to the several States. The adoption of these amendments in no way granted the right to vote to anyone. The 15th amendment prescribed that the States and the Federal Government could not use race, color, or previous conditions of servitude as a qualification. When these three factors do not serve as the basis by denying a citizen the right to vote, there is no legislation which can be enacted by the Congress under the 15th amendment to assure that this citizen or citizens shall vote. It is on the basic constitutional principle, Mr. President, that I challenge the constitutionality of title 6 of H.R. 8601. The pertinent principles of title 6 are as follows:

In any proceeding instituted pursuant to subsection (c)—

That is, of the Civil Rights Act of 1957—

in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a), the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice.

The following sentence is of particular interest as to the constitutionality of this section:

If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for 1 year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law.

It is at once apparent, Mr. President, that the language of this legislation does not meet the requirements for legislative provisions of the 15th amendment. The only requirement stipulated in this particular provision to require the State to register the applicant is that he shall have been a member of the same race as the persons involved or for whom the original suit was instituted. A perusal of the section will reveal that there is no requirement that the person shall have been discriminated against on account of race or color. The system embraced within the provisions of title 6 is an affirmative process whereby the Federal Government undertakes to pass on the qualifications of a citizen who is not required to have been discriminated against on account of race or color.

Mr. President, an amazingly similar corollary may be drawn between this section and the statute which was before the Circuit Court of Appeals in Karem against U.S. In that case the court was called upon to pass upon the constitutionality of 18 U.S.C. 51 which had for its objective the punishment of all persons who conspire to prevent the free enjoyment of any right or privilege secured by the Constitution or laws of Congress, without regard as to whether the persons so conspiring are private individuals or officials exercising the power of the United States or of a State and which did not draw any distinction between a conspiracy directed against the exercise of the right of suffrage based upon race or color.

It is obvious that the state of facts existent in the Karem case is not dissimilar from the situation presented by the language of title 6, which I have previously quoted. It is patent that this legislation is not appropriate for the enforcement of the 15th amendment.

Mr. President, the proposed legislation derives its innumerable defects by virtue of the fact that the normal legislative process has been ignored and abandoned in its consideration. The violence to normal procedures in both Houses of Congress has in turn resulted from the fact that the motives prompting the consideration of this legislation are not based on need, or even demand, but rather on political expediency. This is an election year. The minority bloc votes in the country have for a number of years exercised, or at least have claimed to exercise, such a major influence on national elections that both parties now seem to think that they must

bait their voting hooks with a lure of so-called civil rights legislation. In selecting the lure, there seems to be a partiality for the extreme. The need for protection of constitutional safeguards and due process pales into oblivion at the prospect of landing, by fair means or foul, the minority bloc vote. Apparently, no holds are barred.

I implore the Senate to control their emotions and let reason prevail for a time. In the years since our Republic was founded, many candidates, officeholders, and even political parties, have appeared on the public scene, performed or failed in their functions, and have disappeared. The impression they made, and their contributions to, or detractions from, the liberties and well-being of the American citizens have, fortunately, for the most part, accomplished little change in the concepts embodied in the Constitution which guarantee a continuation of liberty in the United States. The Constitution, however, has from its origin remained on the whole inviolate in the basic safeguard of American liberty. The candidates and officeholders in this election year of 1960, and possibly even the political parties now existing, will also pass from the political scene. Let us not, therefore, as an expedient for temporary political gain, and relatively short-lived political power, destroy the very political framework within which we seek to exercise the responsibilities of office, and thereby surrender the American citizens to despotism.

Mr. President, I hope that the Members of this body are not so blinded in their zeal to attract the minority bloc vote that they will ignore the constitutional principles which have regulated our actions since the founding of this great Republic. It is with this sincere hope that I offer an amendment to the so-called civil rights bill in an attempt to cure one of the more flagrant abuses of our Constitution. The amendment which I offer would amend section 601, the section which I have previously discussed, so as to require that any person who is seeking an order from the Federal court with respect to his right to vote must justify such action on the ground that he has been deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote on account of race or color; or in the alternative, on account of race or color, fund not qualified to vote by any person acting under color of law. The effect of this amendment, Mr. President, would be to bring this section within the purview of appropriate legislation as contemplated by the 15th amendment.

At the present time, the only requirement of section 601 of the pending bill with reference to an applicant being entitled to an order declaring him qualified to vote is that he shall be a member of the same race as the person involved in or for whom the first suit was brought. Section 601 makes no requirement that the applicant shall have been denied the right to vote on account of race, color, or previous condition of servitude, as is required by the 15th amendment, before legislation is appropriate. In other words, Mr. President, this section allows the Federal Government to pass upon the qualifications of a man to vote in State elections without any finding that the particular man has been denied the right to vote on account of his race or color. It is to cure this constitutional defeat that I propose this amendment to the bill.

Mr. President, I call up my amendment.

Mr. ERVIN. Mr. President, I wish to commend the able and distinguished junior Senator from South Carolina [Mr. THURMOND] for pointing out, in the very eloquent speech which he has just made, the fundamental vice or defect in the voting provisions of this bill.

As he pointed out, the Federal Government has no power whatever to act in this field other than that conferred upon it by the 15th amendment. Yet this bill undertakes to allow the Federal Government to exercise that power, without any finding being made that those who make application for an order subsequent to the adjudication of a pattern of discrimination have been denied the right to vote or have had that right abridged by the State on account of race or color—the only condition under which the Federal Government has constitutional power to act.

The distinguished and able junior Senator from South Carolina has always fought intelligently and courageously for the preservation of constitutional government in America. He merits the thanks of the country in so doing. I sincerely hope his amendment will be adopted.

Mr. PROUTY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KUCHEL. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from South Carolina [Mr. THURMOND].

The amendment was rejected.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States submitting nominations was communicated to the Senate by Mr. Miller, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session,

The PRESIDING OFFICER laid before the Senate a message from the President of the United States submitting sundry nominations, and withdrawing the nomination of Robert C. Miller, to be postmaster at Pontiac, Mich., which nominating message was referred to the Committee on Labor and Public Welfare.

(For nominations this day received, see the end of Senate proceedings.)

CIVIL RIGHTS ACT OF 1960

The Senate resumed the consideration of the bill (H.R. 8601) to enforce constitutional rights, and for other purposes.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. ELLENDER. Mr. President——

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. ELLENDER. Mr. President, I move that title VI be stricken from the bill.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Louisiana.

Mr. ELLENDER and Mr. DIRKSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

Mr. KUCHEL. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from California will state it.

Mr. KUCHEL. Does the amendment have to be read at the desk, before we act upon it?

The PRESIDING OFFICER. The motion is to strike out a title from the bill.

Mr. DIRKSEN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Louisiana yield to the Senator from Illinois?

Mr. ELLENDER. I yield for a question.

Mr. DIRKSEN. I wanted the Senator to yield for more than a question.

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

Mr. ELLENDER. I have the floor, and I do not want to lose my right to the floor.

Mr. DIRKSEN. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question.

Mr. DIRKSEN. I should like to inquire of the distinguished Senator whether he expects to address himself to this motion at considerable length?

Mr. ELLENDER. Yes.

Mr. DIRKSEN. May I inquire how long the Senator would interpret "considerable length" to mean?

Mr. ELLENDER. Oh, I do not know; 5 or 6 or perhaps 10 hours.

Mr. DIRKSEN. Five or six or ten hours?

Mr. ELLENDER. Or perhaps 15. [Laughter.]

Mr. DIRKSEN. Without interruption?

Mr. ELLENDER. Well, that depends.

Mr. DIRKSEN. Of course, there is a big disparity between 5 hours and 15 hours.

Mr. ELLENDER. I shall try to answer questions, also.

Mr. DIRKSEN. Could the Senator say 6 hours or 7 hours?

Mr. ELLENDER. It depends upon when the majority leader desires to recess. I do not know about that.

Mr. DIRKSEN. Mr. President, I wish my distinguished friend from Louisiana well in his endeavor.

The PRESIDING OFFICER. The Senator is not stating a question. The Senator from Louisiana has the floor.

Mr. LAUSCHE. Mr. President, will the Senator from Louisiana allow me to ask the Senator from Illinois to put a question to the Senator from Louisiana?

Mr. ELLENDER. Provided I do not lose my right to the floor.

Mr. DIRKSEN. I do not have the floor, Mr. President.

The PRESIDING OFFICER. The Senator may proceed.

Mr. LAUSCHE. The Senator from Ohio would like to know, on the basis of what the Senator from Louisiana has said, whether it would be safe for him to leave and return at about 7 p.m.

Mr. ELLENDER. It would.

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

Mr. ELLENDER. Mr. President, during the course of the debate in connection with the pending bill and its predecessor, the so-called Dirksen substitute, suggestions were made that if this proposed legislation should be enacted the representatives of the Southern States—may we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Louisiana may proceed.

Mr. ELLENDER. Mr. President, during the course of debate in connection with the pending bill, and its predecessor, the so-called Dirksen substitute, suggestions were made that if this proposed legislation should be enacted the representatives of the Southern States could look for some kind of a respite, and that our concurrence in the pending bill might mean that a moratorium on such nefarious legislation might be declared for the future, at least for the next few years.

Mr. DIRKSEN. Mr. President, I am sorry to interrupt, but will the Senator yield again?

The PRESIDING OFFICER. Does the Senator from Louisiana yield?

Mr. ELLENDER. I yield for the question.

Mr. DIRKSEN. It is not quite a question; it is an observation. The Senator will protect his right to the floor, of course.

The PRESIDING OFFICER. Does the Senator from Louisiana yield?

Mr. ELLENDER. I yield, provided I do not lose my right to the floor.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Louisiana? The Chair hears none, and it is so ordered.

Mr. DIRKSEN. Mr. President, at the point when the Senator from Louisiana concludes his remarks I expect to be in the Senate Chamber, whatever the hour, and I shall move to table the motion.

The PRESIDING OFFICER. The Senator from Louisiana may proceed.

Mr. ELLENDER. Mr. President, I sincerely wish that I could believe there would be the respite to which I have referred, but there is no indication that such, indeed, will occur. Similar bills have been coming before the Senate almost annually, ever since I first took my seat in this body on January 3d in 1937.

It strikes me, Mr. President, that efforts to "nibble" away at the sovereignty of our States, and the rights of our people to govern themselves, and to live in peace without Federal coercion, will never cease until proponents of the nefarious bills decide to stop making a political whipping boy out of the South.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. Those Senators who desire to converse will please retire to the cloakrooms.

The Senator from Louisiana may proceed.

Mr. ELLENDER. Mr. President, until and unless this happens, there will be no respite. There will be no legislative peace. There will be no end to the agitation.

These bills will continue to come before us as a means of wooing and winning votes of minority groups in the North, by encouraging and fostering a strong—yes, overpowering—centralized Federal Government, and the forging of a legislative spear pointed at the hearts of our southern people.

Mr. President, we were given to understand in 1957 that if the Civil Rights Act, which is presently on the statute books, were passed without strong southern opposition, it would end the so-called voting right drive. "Do not oppose this bill," we were told; "at least, do not filibuster against it, and you will not only foster peace and harmony among the ranks of Senators, but you will also see the end of so-called civil rights legislation for quite a few years to come."

As a result of these pleadings, and because we were vastly outnumbered then as, indeed, we are now, the southern caucus agreed to oppose the measure, but, further, we agreed that we would not try to talk it to death.

The same pleadings are before us again today. Again we are vastly outnumbered. Again we are about to be trampled upon should the vast and overwhelming majority determine to destroy the fragile legislative safeguards which presently protect us from an engulfing tide of majority rule.

And, despite the indications of future peace which were given to us, another nibble is being taken in the rights of our people. As a matter of fact, Mr. President, more than a nibble is involved. This bill would take a wholesale bite out of the diminishing fabric of constitutional liberties created by our Founding Fathers.

There is no end to it, Mr. President. There is no possibility of compromise or agreement with the proponents of this vicious legislation any more than there is compromise or agreement available with some of the other political forces which gnaw and nibble at the vital organs of our body politic.

I know just as certainly as I stand here that should we compromise today, it will only be a matter of a few short months before we are again pressed to the wall by those who advocate political hate bills as a means of securing their own partisan advantage.

For this reason, Mr. President, I want to serve notice that I will not compromise. There are matters of basic principle involved in this debate, and to my way of thinking, there can be no compromise on principle.

If Senators doubt that this bill would place the Federal Government in the business of conducting local elections, let me review the provisions of title VI of this bill. Once this review is completed, I believe that any fair thinking person will agree with me that this so-called right to vote section would put the long arm of Uncle Sam into each and every election which might be held in our respective States—not only Federal elections, but State, parish, and municipal elections as well.

Mr. President, the final section of the bill under consideration, the so-called voting referees section, is very complex, and most difficult to understand. The analysis and discussion which follows is as complete as I was able to make during the intervening time since the bill was reported by the Senate Judiciary Committee of this body. Never have I witnessed such a legislative spider web. It lumps and mixes together practically every form of governmental power known to us. Involved are judicial powers, legislative powers, administrative powers, and the good Lord only knows what else. It is my sincere belief that under no circumstances should this motley checkered, tattered patchwork be enacted into law.

As I understand the section, the machinery provided therein would be set into motion by the filing of a suit by the Attorney General of the United States under the authority of the 1957 Civil Rights Act. This would involve, initially, a finding by the Attorney General that a person or persons had engaged, or that the Attorney General had been given reasonable grounds to believe that a person or persons were about to engage, in any act or practice which would have the effect of denying a citizen of the United States his right to vote, on account of race or color.

This suit would, of course, be filed in the appropriate district court of the United States. It would be a suit in the name and on behalf of the United States, although, as is obvious, the right sought to be vindicated is an individual right. Certainly, the U.S. Government has no right to vote; thus, the practical effect of the 1957 act is to vest in the U.S. Government a right of action founded upon the violation, alleged violation, or threatened violation, of an individual right.

Under the 1957 act, the Attorney General is authorized to don the robes of public defender, and, armed with the majesty of Federal power, to go forth and litigate, not public rights, but purely private, individual rights, and to do so at the expense of the Public Treasury. As is evident, this, in and of itself, accords to those whose individual rights the Attorney General may choose to vindicate, privileges unknown to the great mass of our people. As the junior Senator from the State of Georgia so aptly put it, on a nationally televised program recently, Negroes who believe their right to vote may be about to be interfered with can

have the services of a taxpaid lawyer, in order to vindicate those rights.

I voted against the 1957 act, and, if I had it to do over again, I would vote against that legislation once more. But the 1957 act is now law; it is on the statute books, and I am realistic and reasonable enough to understand and appreciate that it is not going to be repealed any time soon. This, of course, does not preclude my disagreement with that statute, both as to procedure and purpose, and, disagree with it I do. But the truly vital fact to be realized and appreciated is that any aggrieved individual has the right to call upon the services of a legion of lawyers in the Justice Department to file suit, at public expense, to vindicate his individual rights. Once it is appreciated that such suits are filed in the name of, or on behalf of, the U.S. Government, once it is understood that two of the three branches of the Federal Government—the judiciary and the executive—are thus permitted to be allied against individual State officers, or, at best, individual States, even individuals, then the obvious question arises, "Why is anything else needed?"

At this point, Mr. President, I do not believe it is asking too much for the Senate to endeavor to answer that very question. Why is any more legislation needed in this area?

After studying the Senate and House debates on these issues, it seems to me that the reasons most often advanced to support the alleged need for such legislation are the following:

First, the fact that in several counties throughout our country, and principally in the South, there is a lower than average Negro registration.

Mr. President, these data, standing alone, do not mean anything. They do not prove anything. They do not even tend to prove anything.

As quite a few other Senators have tried to point out, there is no way of telling just how much of the apparently low Negro registration in some southern areas is the result of apathy. Furthermore, it has been stated, and doubtedless with some justification, that perhaps the lack of an active Republican Party in the South is the cause of much of the lack of interest on the part of Negroes, insofar as participation in the electoral processes of our country, and of our States, may be involved. Let me remind Senators, too, that citing bare percentages in support of general propositions is a dangerous practice. Senators know, for example, that the percentage of white students enrolled in Howard University here in Washington is very low. I do not have the precise figures before me, but I would guess that less than 10 percent of Howard's student body is white. Applying the same logic to Howard University as is sought to be applied to voting registration in the South, it is obvious that Howard University is discriminating against white students. Yet, according to my information, Howard will and does admit white students, but, for some reason, not many white students desire to be integrated into the campus of Howard University. Are the white children of Washington being discriminated against because only 23 percent of the students are white and 77 percent are Negroes?

Thus, Mr. President, it is clear that the promiscuous, bare, and naked use of statistical raw data involving voting registration in the South is syllogistic reasoning of the rankest kind. Now, if Senators want to use some of this data properly, they might point out that registration of Negro voters has been growing by leaps and bounds throughout the South during recent years. I have in my possession a table headed "Louisiana Voter Registration—Racial Statistics—Totals, 1888 Through January 31, 1959." This table shows remarkable evidence of increased Negro interest and participation in voting in my State. In 1940, for example, there were only 886 registered Negroes in the entire State of Louisiana. By 1948, this number had increased to 28,177. As of January 31, 1960, this table shows that nearly 157,000 Negroes were registered to vote in Louisiana. In other words, Mr. President, the trend has been upward; more Negroes are being registered in Louisiana than at any time subsequent to Reconstruction. Great progress is being made, but those who so glibly quote statistics in the Senate fail to take note of the progress. They desire to use statistics in order to support their own biased views and objectives.

I want to state, too, that these individuals have been aided and abetted by the so-called Civil Rights Commission. Now, Mr. President, I opposed the creation of this Commission, and, at the time, I predicted that it would simply develop into another organization of agitators. Unfortunately, my predictions have come true. Instead of performing an objective, unbiased task, the Commission proceeded to go out and stir up antagonisms, to agitate, and, I must add, Mr. President, to blatantly misrepresent the facts.

For example, on page 140 of its first report, the Commission blandly states:

> No one had yet been registered through the civil remedies of the 1957 act. * * * The delays inherent in litigation, and the real possibility that in the end litigation will prove fruitless because the registrars have resigned make necessary further remedial action by Congress.

In brief, the Commission found that the 1957 act was not sufficient—that something more was needed.

Now, Mr. President, let us see just how well founded in fact the Commission's findings were.

First, the Commission undertook to evaluate the entire field of voting rights on the basis of only one 2-day hearing, held in Montgomery, Ala. That was the only hearing involving voting rights held by the Commission from its creation, through the date of the report it filed with the President on September 9, 1959. As a matter of fact, Mr. President, only two voting rights hearings were scheduled at all by the Commission during this period, the Alabama hearing, which was held on December 8 and December 9, 1958, and the Louisiana hearing, scheduled for Shreveport, La., on July 13, 1959, which hearing was enjoined by the appropriate Federal district court.

I know of no comprehensive report which could, in all fairness, have been based on only one hearing. If the Congress endeavored to evaluate a complex problem such as voting rights in all the States in our Union on the basis of only one 2-day hearing, in one State the newspapers would mimic our report out of circulation. Yet, when the Civil Rights Commission files comprehensive, sweeping findings, and recommends changes in both statutory and constitutional law, on the basis of only one hearing, then, for some reason, the Congress is supposed to bow down and worship at the feet of this "oracle."

The Commission also found that the 1957 Civil Rights Act was not strong enough. On what was this finding based?

It must be remembered, Mr. President, that the report in which this finding was outlined was submitted to the President on September 9, 1959. As of that date, only three suits had been filed by the Attorney General under the authority of the 1957 act. Yet, on the basis of these three suits, the Civil Rights Commission issued a finding that the 1957 act was not strong enough.

If any conclusion were to be drawn from the record of the Attorney General under authority of the 1957 act it should be that the act is unnecessary, and that any further remedies in the field of voting rights would be highly superfluous If, indeed, voting deprivations are as prevalent in the South as the Commission would have Congress believe, then why have only four suits in all been filed under the 1957 act? If Negroes are denied the right to register and vote on a wholesale basis, then the dockets of our courts should be clogged with suits. In the alternative, the fact that, to date, only four such suits have been filed is eloquent evidence that conditions are not nearly so bad as the Commission would lead Congress to believe.

Bear in mind, Mr. President, that the only "trigger" required in order to initiate a suit under the 1957 act is a "reasonable belief" on the part of the Attorney General that—and I quote the statute—

> Any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b).

Since only four suits have been filed by the Attorney General, I believe it is reasonable to conclude that in only four instances did such "reasonable grounds" exist, and, based upon this assumption, the inference to be drawn is not that additional remedies are needed, but that allegations of denial of the right to vote have been grossly exaggerated.

Let the record also show that the Commission's assumption that the 1957 act is not strong enough was made prior to the time that any of the suits filed by the Attorney General under the authority of the 1957 act had proceeded to final judgment. Since that time the Supreme Court, in the case of U.S. against Thomas, has upheld a lower court decision restoring to the voting rolls the names of over 1,300 Negro voters in Washington Parish, La.

Furthermore, in the case of U.S. against Raines, the constitutionality of the 1957 act was sustained. Frankly, Mr. President, in the light of the Washington Parish decree alone, I fail to see how any further remedies are deemed necessary. Since the 1957 act has been utilized on only four occasions since its passage, nearly 3 years ago, and since one of these four suits has resulted in restoring 1,300 challenged voters to the rolls in one fell sweep, so to speak, it strikes me that all the possible authority required is already present.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a schedule of events occurring under the authority of the 1957 act from the date of its enactment through November 16, 1959, some 2 months subsequent to the filing of the report of the Civil Rights Commission.

There being no objection, the schedule was ordered to be printed in the RECORD, as follows:

Chronology of activities, Civil Rights Commission and Civil Rights Division, 1957–59

1957

September 9: Civil Rights Act becomes law.

November 7: President sends nominations of members of Civil Rights Commission to Senate.

December: Civil Rights Division created in Department of Justice.

1958

February 18: Tiffany nominated as Staff Director of Commission.

February 24: Hearings held on nominees to Commission.

March 4: Commission members confirmed.

April 2: Hearings on Tiffany nomination.

May 14: Tiffany confirmed.

August 14: First sworn complaint as to voting rights received by Commission.

September 4: First suit filed by Attorney General under 1957 act—*U.S.* v. *Rains* (U.S. Dist. Ct., Middle Dist., Ga., civ. action A–442).

December 8 and 9: Commission holds vote hearings in Montgomery, Ala.

1959

February 2 and 3: Commission holds hearings on housing in New York City.

February 6: Suit filed by Attorney General under 1957 act—*U.S.* v. *Alabama* (Mid. Dist., Ala., Eastern Div., No. 479E).

March 5 and 6: Commission holds hearings in Nashville on desegregation of Nashville schools.

April 10: Commission holds hearings on housing in Atlanta.

May 5 and 6: Commission holds hearings on housing in Chicago.

June 10: Meeting of Commission with officials of Federal housing agencies in Washington.

June 29: Suit filed by Attorney General under 1957 act—*U.S.* v. *Thomas* (Eastern Dist., La., N.O. Division, No. CA–9146).

July 13: Hearings on voting rights complaints scheduled to be held in Shreveport, La.; hearings restrained by Federal court.

September 9: Civil Rights Commission Report submitted to President.

November 16: Suit filed by Attorney General under 1957 act—*U.S.* v. *Fayette County Democratic Executive Committee* (West. Dist., Tenn.).

Mr. ELLENDER. Mr. President, this timetable demonstrates that the Commission's evaluations and findings of fact in the field of voting rights were based upon only one public hearing in one State, and that, despite this lack of any solid foundation, the Commission proceeded to evaluate and condemn registration laws in all of the States of the South. If this is not bias, I do not know what bias is. Two days of hearings is certainly not a sufficient basis to warrant the wholesale condemnation of electoral processes in our Southern States, and, further, to support the broadside allegation the 1957 act needs to be strengthened.

Yet, despite the facts which I have laid before the Senate, the Civil Rights Commission is quoted as "authority" for the need for this legislation. As a matter of fact, much of the pending bill far exceeds the Commission's recommendations, and the great bulk of the measure proceeds far beyond the field of voting rights.

Reverting to title VI of the House bill, let us see what this obnoxious illegal concoction involves.

First, as I have already indicated, the machinery it envisions would be set in motion with a suit filed under the 1957 act by the Attorney General, in the name of, or on behalf of, the United States. Once this suit is filed, the Attorney General may request that the court find that the deprivation or denial of the right to vote alleged in the Attorney General's original pleadings is the result of a pattern or practice.

This brings us to the first grave fault in the bill, Mr. President. Nowhere are the terms "pattern or practice" defined. At no point in the bill are guidelines laid down as to what constitutes a "pattern," or what constitutes a "practice."

Webster defines "pattern" as follows:

Pattern: (1) Anything proposed for or worthy of imitation; exemplar; as a pattern for men. (2) Anything designed as a guide or model for making things; as, a dressmaker's pattern. (3) Archaic: A representation or copy; a likeness. (4) A specimen; sample. (5) Design; specif: (a) Form; shape; outline; as vases in many patterns; (b) a decorative figure or motive; as a chintz with a small pattern; (c) an arrangement or composition that suggests or reveals a design; a configuration; as, a poem with a pattern. (6) United States: A length of cloth sufficient for a garment. (7) Founding; a model for making the mold into which molten metal is poured to form a casting. (8) Gun: Distribution of shot from a shotgun or bullets from an exploded shrapnel. (Syn.: See model: v.t. (1) To fashion with reference to a pattern—usually with after, on, upon. (2) Rare: (a) To foreshadow; (b) to match; (c) to imitate. (3) To furnish with a pattern.)

The only portion of this definition which might be applicable here would be portion 5-c of this definition, namely, "an arrangement or composition that suggests or reveals a design."

Mr. President, it strikes me that this is a pretty vague definition as to what may be found, and, as a result of that finding, to throw the entire electoral processes of a State into receivership. What, pray tell, is "an arrangement—that suggests a design"? For that matter, what is a "design"? Obviously these terms are not capable of precise definition, and, for that matter are so vague as to be indefinite.

Reference to the definitions of "practice" cast no further light on this problem. Actually, Mr. President, it should not be necessary to have to refer to the definition of "practice" in order to see what might be meant by "pattern," since the two terms are in the disjunctive, in the alternative. A finding of either a "pattern" or "practice" would be sufficient to permit a Federal judge to throw a State into Federal receivership.

Thus, since the first of the two alternative factual standards outlined in the bill is so vague and indefinite as to violate any known concepts of due process of law, the entire "standard" should fall. However, for the purpose of further clarification, let us turn to the definitions given in Webster's dictionary for the word "practice":

Practice, practise: (1) To do, perform, carry on, or exercise, esp. often or habitually. (2) To perform or work at repeatedly; to acquire proficiency; as to practice music. (3) To follow or work at, as a profession; as, to practice law. (4) To teach or accustom by practice; train; drill. V.i. (1) To act, operate, proceed; (2) to perform certain acts often for proficiency; (3) to pursue an employment or profession actively, esp. medicine or law; (4) now rare: to scheme, plot, intrigue; (5) to put something into practice, as to practice rather than to preach. (Syn.: Practice, exercise, drill, mean to perform or make perform repeatedly. Practice further implies an accustoming and acquirement of proficiency; exercise a strengthening or developing by keeping busy or at work; drill, a formation of correct habits by mechanical repetition.)

Practice, v.t.: (1) Actual performance or application of knowledge, distinguished from theory, profession, etc.; as, engineering practice. (2) Repeated or customary action, usage; habit; as, the practice of rising early. (3) Usual mode or method of doing something; as, the practice is to use local anesthetic; in plural usually derogatory; as the practices of tricksters. (4) Stratagem; a scheme; a plot. (5) Systematic exercise for instruction or discipline; as, practice makes perfect; also, practical acquaintance proficiency, etc. so, acquired; as, to be out of practice. (6) (a) The exercise of any business or occupation; as, the practice of law; (b) professional business or work, esp., as an incorporeal property; as, he sold his practice. (7) Arith: A compendious method of performing multiplication by means of aliquot parts. (8) Law: established mode of conducting suits and prosecutions.

The most appropriate of the various definitions recited herein is "usual mode or method of doing something." Thus, this standard would require a Federal judge to make a factual determination that an alleged denial of the right to register to vote, or to vote, as to one individual was, in effect, "the usual mode or method of doing something." I most respectfully submit, Mr. President, that this standard, as well as the alleged standard of "pattern" both require factual determinations which are beyond the purview of any judge. By all means, since the determinations are to be, in effect, the finding of facts which are, further, found to be true and valid, the finding of such facts, at least the evaluation of them, should be the province of a jury, not a judge. It is just this simple:

If a Federal judge were to decide to make the finding of a pattern or practice, nothing under the sun could prevent him from implementing such a finding, even

though it might be the result of bias, antagonism, or related factors. On the other hand, there is nothing to prevent the judge from suggesting to the Attorney General, or his agent in the litigation, that perhaps a request for such a finding should be made. Bluntly, Mr. President, the findings of a pattern or practice could well be the result of a judge's preconceived notions, his inherent bias, or even his dislike for or his personal animosity toward certain State officials, since the standards upon which such a finding are proposed to be rested are so vague and indefinite.

Furthermore, what would be the practical effect, once such a finding were made? I have already referred to the fact that such action would throw the electoral processes of a large area of a State—perhaps an area as large as an entire Federal judicial district—into receivership.

This would be accomplished by means of the court's finding, which, as has already been pointed out, would create a conclusive presumption that because Mr. A had been discriminated against, every member of Mr. A's race had suffered similar discrimination.

I understand that Mr. Rogers and Mr. Walsh do not like the term "conclusive presumption"; they prefer the term "statutory presumption," and the reason for this preference is obvious. "Statutory presumption" is broader, and is not nearly as accurate in describing the real effect of this finding. There are many varieties of "statutory presumption," the two main types being the conclusive presumption and the prima facie presumption. The prima facie presumption is rebuttable; all it does is shift the burden of proof, and requires the individual or entity against whom the presumption operates to come forward and by independent proof to rebut the presumption. On the other hand, a "conclusive presumption" is not rebuttable. It stands, no matter how contrary the evidence may be. As a matter of pure reality, a "conclusive presumption" is not a presumption at all, but, once it has been created, establishes a rule of law.

These distinctions become of vital importance, since the rule seems to be clear that a legislature cannot create conclusive presumptions except under severely limited circumstances. To this effect is section 9 of the American Jurisprudence Treatise on Evidence—20 Am. Jur. 39—which states:

> The distinctions generally observed by the courts regarding the validity of statutes which made one fact evidence of another are between legislative declarations that certain facts shall be conclusive of another fact and those that they shall be prima facie or presumptive evidence of another fact. While the legislature cannot constitutionally make one fact conclusive evidence of another, it is well established that it may provide by statute or ordinance that certain facts shall be prima facie or presumptive evidence of other facts, if there is a natural and rational evidentiary relation between the facts proved and those proved.

Section 10 of the same work is more specific, and I quote from volume 20, American Jurisprudence, page 41:

> 10. Conclusive evidence.—Statutes which declare one fact conclusive evidence of another material fact in controversy are unconstitutional if the former is not, in and of itself, by virtue of its own force, conclusive.

Mr. ERVIN. Mr. President, will the Senator from Louisiana yield for a question which bears directly on the point to which he has just now referred?

The PRESIDING OFFICER (Mr. McGEE in the chair). Does the Senator from Louisiana yield to the Senator from North Carolina?

Mr. ELLENDER. I yield for a question.

Mr. ERVIN. Does the Senator from Louisiana agree with me on the proposition that if one can possibly support the provision which would make this conclusive presumption binding for a year, under the Constitution, then one could also support the proposition to make it conclusively binding for 40 years or 50 years?

Mr. ELLENDER. Yes; or indefinitely.

Mr. ERVIN. And thus a State could be denied the right to manage its own affairs and its own elections, notwithstanding the fact that all discrimination based on race or color had ceased immediately after there was a finding of the existence of a pattern or practice of such discrimination.

Mr. ELLENDER. I fully agree.

Mr. ERVIN. In other words, if the State the very next day discharged the election officials, and placed in office a new set of election officials who never practiced discrimination against anyone on the basis of race or color, nevertheless the State would be robbed of the power to pass on the qualification of its own voters, the 15th amendment to the Constitution to the contrary notwithstanding; is that correct?

Mr. ELLENDER. That is correct. That is my understanding.

Mr. President, I continue to quote:

> This rule, although frequently applied in criminal cases, is not limited to such cases but applies to civil cases as well. Such statutes violate the due process clause of the Constitution. The rule that the legislature cannot constitutionally make certain facts conclusive evidence finds illustration in that class of cases involving the question of validity of a statute or ordinance purporting to regulate weights as between buyer and seller.

With further reference to presumptions, I quote from section 158 of the American Jurisprudence Treatise on Evidence—20 Am. Jur. 161–163:

> 158. Definitions, nature, and characteristics.—The courts have propounded a plethora of definitions in their attempts to describe the basic characteristics of a presumption. Generally, however, a presumption may be defined as a rule of law that attaches definite probative value to specific facts or draws a particular inference as to the existence of one fact, not actually known, arising from its usual connection with other particular facts which are known or proved. It is the conclusion of law which the court draws of the existence of one fact from others already proved. The genesis of any presumptive concept is dependent upon the character of the particular presumption. Thus, some presumptions have their origin in broad common-law concepts or statutes, while others are founded upon basic principles of justice, laws of nature, the experienced course of human conduct and affairs, or the connection usually found to exist between specific agencies. But, in any event, presumptions must always conform to the commonly accepted experiences of mankind and the inferences which reasonable men would draw from such experiences. Thus, a practice, if well established, is presumed to have been followed in individual cases, and is accepted as sufficient proof of the fact in question where primary evidence of such fact is lacking.
>
> Similarly, in some instances the law creates a conclusive presumption based upon well-demonstrated facts, as where, after a lapse of a stated number of years, proceedings relative to transfer of real property are conclusively presumed to have been had in accordance with law. But a presumption will never be construed or defined in such manner as to extend its application beyond the realm of reasonable probability or certitude. Accordingly, courts will not define presumptions in such manner as to imply superiority over established facts. Where facts appear, presumptions recede. * * *

This final sentence is important, and I read it again: "Where facts appear, presumptions recede." Yet, in the case at hand, there would be no opportunity to offer facts to rebut the presumption created as a result of the court's finding, since the presumption would be conclusive.

There was considerable debate on this point in the House, and despite the clear and lucid discussion offered by the distinguished Representative from the Third Congressional District of Louisiana, EDWIN WILLIS, proponents of the "pattern or practice" presumption insisted that fair and adequate opportunity would be offered to the State, or any other defendant, to rebut this presumption. This is not correct, and to those who, during House debate, made the mistake of confusing the pattern or practice finding with the presumption it would erect, I wish to say this:

It is true that there could be an opportunity accorded any defendant in a suit brought under the 1957 act to offer evidence on the facts of "pattern" or "practice." But the finding of a "pattern" or "practice" is not, of itself, a presumption. On the contrary, the finding is what creates the presumption; it is not the presumption itself. Thus, while there could be adversary proceedings in conjunction with a prayer from the Attorney General to the court that a "pattern" or "practice" be determined, the offering of any further evidence on this point, at any other time, would be precluded.

And what would this "finding" of a "pattern or practice" create in the way of a presumption? Simply put, the finding of a "pattern or practice" as to one individual—and that is what we are dealing with, one individual—would give rise to a conclusive presumption that each and every denial of registration of all members of that same race was based upon racial grounds, and for no other

reason. Thus, if applicant B, a member of the same race as A, had been denied the right to register, or to vote, then the finding of the fact that I had been denied of his right to register to vote, or to vote, as a result of a pattern or practice based on race, would be applied as a conclusive presumption, as a rule of law, if you please, that B had been similarly denied. There would be no opportunity offered to the State, or to others, to prove that B had actually been refused registration for some other bona fide reason. On the contrary, once the finding issued, then the State electoral machinery would grind to a halt, and would be supplanted by Federal machinery.

It is interesting to note that during House debate, and specifically, during consideration of the presumption which the pattern or practice finding would create, several proponents of this legislation pointed to other "conclusive presumptions" known to the law, such as: A child under a stated age cannot create a felony, a boy of 14 is not capable of committing rape, and so forth. Yet, each and every "conclusive presumption" recited, every one pointed to during House debate, is a presumption erected in order to prevent injustice to a defendant. Thus, by conclusively presuming that a child of 5 cannot commit murder, as being incapable of possessing the required "mens rea," or state of mind, additional protection—reasonable protection—is accorded to children of tender age.

Yet the presumption created under the terms of the House bill would be applied, against defendants—defendants who might be sovereign States, or agencies or officials of such States, or even private individuals.

Was ever a more obnoxious prospect devised?

Much has been made of the fact that State officials, or other appropriate defendants, would be given an opportunity to be heard, and to oppose any determinations made by a referee acting under the "conclusive presumption" at the time the referee filed his report. Yet, Mr. President, in the light of the terminology of the bill, and its legislative purpose, as often stated by proponents, it is obvious that this "opportunity" is more illusory than real.

For example, the bill, as passed by the House, specified that the hearing before a referee must be ex parte. Fortunately, this feature of the bill was modified by the Senate Committee on the Judiciary, to the extent that the ex parte requirement was stricken, and provision was made for 2 days' notice to the county or State registrar of the time and place of any hearing. It was further specified that such hearing must be held in a public office, and that any such State or county registrar shall have the right to appear and make a transcript of the proceedings.

It is worth noting that this modification was greeted with moaning and lamenting on the part of the psuedo-liberal press, and the alleged-liberal proponents of the measure. The Senator from New York [Mr. KEATING], declaimed that the modification I have referred to gravely damaged the purpose of the bill; the Washington Post declared that the committee language resulted in a "watered down" measure.

If any meaning is to be determined from this weeping and wailing, it can only be that, under the House version, the intent was that hearings before referees were not only to be ex parte, but that they were to also be "in camera," that is, behind closed doors, in a secret place, completely insulated from public view and scrutiny of any kind. If, indeed, this was the intent, and the rantings of proponents of this bill and the wailings of the Washington Post so indicate, then, Mr. President, we have here further evidence of the devious schemes and evil purposes of this so-called right to vote bill. I might say that proponents evidently desire to adopt an electoral "Code of Hammurabi"—Senators will remember he was a Babylonian King who had his own rules and regulations—with presumptions of guilt at every corner, and remedies based upon the doctrine of "an eye for an eye, a tooth for a tooth," and two wrongs for every one alleged.

In any event, although the bill as reported still does not accord to any defendant the right to cross-examine his applicant-accusers, although it still does not guarantee to defendants the right to offer evidence on the points developed during any "hearing," although the legal stench arising from this section should certainly offend the nostrils of all but the most dedicated of the political agitators, at lease some improvement has been made.

Yet, even with the right of accused to observe the machinations of their accusers and the referee guaranteed, the remaining language of the measure still gives rise to the conclusion that so-called rights accorded to defendants to overcome the presumptions created by the bill, are more illusory than real. For instance, the bill makes the statement of any applicant, under oath, before the referee, prima facie evidence of his age, residence, and prior efforts to register or to otherwise qualify to vote. This reference to "prima facie" has the effect of creating another presumption—a rebuttable presumption—but one which requires the defendant in the suit—the State or agent thereof—to assume the burden of proof. In other words, we have here a presumption on top of a presumption—a presumption that any statement under oath before the referees is correct, while the existence of referees, themselves, is predicated upon a conclusive presumption that State electoral processes are riddled with fraud, and unconstitutional action.

However, what makes purely illusory the so-called "right" of defendants in these suits to refute referee findings is the fact that in each and every instance the defendants must carry the burden of proof to upset what I feel sure will be essentially ex parte statements by applicants before the referee. With the understanding that, in each instance, the burden rests upon the defendants to accomplish this fact, it must also be realized that this "burden" must be met in a very narrow and tightly defined manner, and under a rigorous time limit. The bill states that defendants have only 10 days at the most to show cause why a court order endorsing the referee's conclusions should not issue.

Now, time after time, proponents of this measure have declared that its purpose is to "mass enfranchise" members of the colored race in the South. Mass enfranchisement necessarily presumes mass applications to the referee, and the reference back to the court by the referee of the names of all such applicants to the judge for approval. How, in the name of common sense, is any defendant, State or otherwise, going to manage to carry the burdens of proof imposed upon him under this bill, as to hundreds of individuals, in only at the most, 10 days' time? I believe merely asking the question answers it.

Drafters of this bill have used every "gadget" known to the law to apply harsh and unfair treatment to defendants. They have specified, or attempted to specify, and largely succeeded in that effort that hearings before the referee are to be ex parte, in order, we are told, to avoid delay. They have denied to defendants a fair opportunity to meet evidence as it is given, before the referee, and, further, have enveloped such ex parte evidence in the gown of a rebuttable presumption. When the time comes for them at last to pay token tribute to the requirements of due process of law, by according to defendants an opportunity to refute the evidence adduced against them, the proponents of this legislation have managed to so severely limit the "hearing" which due process of law requires as to practically negate it. In other words, Mr. President, after conclusively presuming that State electoral processes are infected with unconstitutional action, this bill turns right around and creates a presumption that the Federal agents who supplant State officials are infallible. I particularly want to emphasize that this "pro-Federal" presumption is, by the nature of the bill's wording, made a rebuttable presumption only, but the opportunity to rebut is so limited, the manner of rebuttal is so proscribed, as to render even this presumption a conclusive presumption in practice, if not in law.

It should also be emphasized that the entire "referee" proceeding bears a taint which should not be embodied into our law. The manner in which it is drafted raises serious questions of constitutionality, not the least of which being that the proceeding before the referee is not, by any stretch of the imagination, a "case or controversy," within the judiciary article of the Constitution. The fact that these proceedings are ex parte fortifies this conclusion, but, over and beyond this, is the further fact that the rules of civil procedure have been tormented and twisted in order to deny to defendants a fair "day in court."

During the limited hearings held on this measure, as well as during House consideration thereof, the statement was made on many occasions that the bill merely applies the well-established concept of "special masters" to voting right cases. On the contrary, Mr. President, this measure applies only a portion of such concept to these proceedings.

Rule 53 of the Federal Rules of Civil Procedure, dealing with the rights and duties of masters, presupposes an adversary proceeding. This right is written into the rule, in section (d), which reads as follows:

1. Meetings: When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or *their attorneys*. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

2. Witnesses: The parties may procure the attendance of witnesses before the master by the issuance and service of subpenas as provided in rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in rules 37 and 45.

3. Statement of accounts: When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

Yet, under the clear terms of the bill, only subsection (c) of rule 53 is made applicable to proceedings before the referee. Initially, this was done as a backhanded means of assuring that such proceedings would be ex parte. Now, however, the drafters have come out into the open and, in the House bill, specified that the hearings before the referees must be ex parte. The hue and cry in the Senate as to the right accorded under the Judiciary Committee's bill to State officials to be present, and to make a transcript of proceedings, demonstrates that the ex parte approach involves more than merely a one-sided proceeding. In reality, not only do the proponents want proceedings before the referee to be one sided, but they also want them to be star chamber, in private, behind closed doors, perhaps in the dead of night.

Their contention that the amended bill would, in the words of Senator KEATING "require 400 days to register 200 individuals," is completely without merit. As a matter of fact, 200 individuals could be heard during the course of one proceeding and, as I read the measure, all that is required is 2 days' notice of a proceeding—not 2 days' notice as to each individual, but 2 days' notice per proceeding. Certainly, there should be no objection to this.

Furthermore, since a subsequent section of the bill, that appearing on page 19, lines 11 through 12, declared that referees have all the powers conferred upon a master by rule 53(c) of the Federal Rules of Civil Procedure, it becomes clear that the actual proceedings before the referee are to remain ex parte, and that the so-called Kefauver amendment merely required that such one-sided proceedings be open to the public.

Now, the Senator from New York [Mr. KEATING] evidently believes such a practice would be terrible. He is opposed to public hearings, he says. For example, on March 30 he told the Senate in a colloquy with the junior Senator from Colorado [Mr. CARROLL]:

Does the Senator share my apprehension that if that language—referring to the Kefauver amendment—is adopted it may require a public hearing before the referee when the one who has been disenfranchised comes in to file his application? Any number of persons could be present at a public hearing.

Mr. President, I have never lived in New York, but I cannot believe that the public officials of New York conduct public affairs as the Senator from New York would evidently like for such affairs to be conducted—namely, behind closed doors, perhaps in the dead of the night, with no opportunity given the public to peek in and see how their business is run. I cannot believe that the great newspapers of New York, the New York Times, the New York Herald Tribune, and others, those newspapers which have campaigned long and vigorously for "freedom of information" and "the public's right to know," would countenance such a practice. I cannot believe that any true liberal would oppose legislative language which merely seeks to accord to the public the right to see how public affairs are conducted. Yet here are Senators, hailed as great liberals, who proclaim their championship of individual rights, actually declaring that a provision of this bill is evil because "any number of persons could be present at a public hearing."

It should also be noted that "liberal" opposition resulted in the elimination of the requirement that the proceeding before the referee be held in a public building, as specified in the Kefauver amendment. Without this safeguard, it is possible for the referee to go forth and "solicit" only those applicants he might desire to solicit and register to vote. He would be empowered to pick and choose those whom he might want to hear. What a political windfall this would be.

Furthermore, it strikes me that the "liberals" are impaled upon the horns of a dilemma in this regard. They have declared time after time that one of the devices used to disenfranchise Negroes in the South is the alleged practice on the part of registrars of voters to close their offices at times when Negro applicants might desire to appear. Actually, Mr. President, this contention is just so much garbage, since the election laws of my State, for instance, impose mandatory duties upon registrars of voters to keep their offices open, to keep them open on certain days, for certain hours, and to make their services freely available to citizens desiring to register to vote during such periods. State law also prohibits a registrar from having his office in a boat or other similar vehicle. At this point I quote the pertinent sections of Louisiana law:

SEC. 71. Parish of Orleans; office and office hours; Algiers office.

A. In the parish of Orleans the registrar's office shall be on the ground floor of some building in the central business district of the city of New Orleans, as equally accessible to voters in all parts of the city as possible. All acts required by this chapter for registration shall be done only in the office of the registrar.

In the parish of Orleans the registrar shall keep his office open daily, Sundays and legal holidays excepted, from 9 a.m. until 4 p.m. He shall, in addition, keep his office open until 6 p.m. on one day of each week, to be specified in advance and publicly announced. For 30 days preceding the time for closing of the registrations before an election, the office shall be kept open from 9 a.m. until 1 p.m. and from 2 p.m. until 8 p.m.

B. In the parish of Orleans the registrar shall maintain permanent office in the 15th ward of the city of New Orleans for the registration of voters. The city of New Orleans shall make an office available, without cost to the State, in the courthouse at Algiers, now housing the recorder's court of the 15th ward, on the ground floor of said building. This office shall be kept open on Wednesday, Thursday, Friday, and Saturday of each week, legal holidays excepted, from 9 a.m. until 4 p.m. In addition, the registrar shall keep this office open until 6 on one of the above days, to be specified in advance and publicly announced. (As amended Acts 1952, No. 206, sec. 1.)

SEC. 72. Location of office at parish seat; office hours.

In parishes other than the parish of Orleans the principal office of the registrar shall be in some suitable and proper location at the parish seat, to be designated by the governing authority of the parish.

In all such parishes containing municipalities of 12,000 or over, the registrar or his assistant shall keep his office open daily, Sundays and legal holidays excepted, from 9 a.m. until 1 p.m and 2 p.m. until 6 p.m. In all other parishes he or his assistant shall keep his office open for 40 hours of each week, including a Saturday, until the registration equals 90 percent of the total previous registration, and after the registration exceeds 90 percent of the total previous registration he or his assistant shall keep his office open 3 days, including a Saturday of each week. During a period of 30 days immediately preceding the closing of the registration prior to any general, special, or primary election, he or his assistant shall keep his office open daily, Sundays and legal holidays excepted. The office hours in any event shall be from 9 a.m. until 1 p.m. and from 2 p.m. until 6 p.m. It shall be lawful to register voters on Sundays. (As amended Acts 1950, No. 15, sec. 3.)

SEC. 72.1 Office hours on election days.

In all parishes of the State on election days the office of the registrar of voters shall remain open from 6 a.m. until 9 p.m. (Added Acts 1952, No. 331, sec. 1.)

SEC. 73. Office on boat or watercraft prohibited; penalty registration other than at office; notice; office at or near polling places;

publication of list of places for registration; offices in municipalities; traveling expenses; time for registering.

A. No registrar shall open his office on a boat or watercraft. He shall remain in his office on the days and at the periods fixed by this chapter, and such other days as are required by the parish governing authority, except when registering voters at other points in the parish, under the circumstances hereafter in this section provided, and shall at no time go to unusual places under the pretense of affording an opportunity to voters to register. He shall remain in each appointed place during the full period named in a public notice, and shall not attend places to register voters of which he has not given notice, as required by this chapter.

Whoever violates this prohibition shall be imprisoned for not less than 60 days nor more than 6 months.

B. In all parishes other than the parishes of Orleans, East Baton Rouge, and DeSoto, the registrar, in every year in which a general election is held or a primary election is held for State officers or Representatives to Congress may, 70 days before the closing of the registration, establish his office for at least 1 day at or near each polling place. Each year in which a municipal election is held he may, prior to the closing of registration, 30 days before the municipal primary, establish his office for at least 1 day in each municipality in the parish. However, he shall, during the last 30 days of the period, Sundays and legal holidays excepted, keep his office open as herein provided. During those 60 days he shall publish at the expense of the parish, in its official journal, a list of the places of registration and the length of time they shall remain open. If there is no official journal, the registrar shall post the list at or near the polling precinct.

C. In any parish containing a municipal corporation of more than 2,000 persons when such parishes do not elect to come under the provisions of a permanent registration law the registrar, or his duly appointed deputy, shall establish an office in the municipal corporation twice each calendar year, for a period of not less than 7 days in any 2 consecutive weeks, Sundays and legal holidays excepted, with office hours the same as prescribed in R.S. 18:72. The 7-day period shall be at any time during the calendar year but at least 30 days before the closing of the registration, where the registration is required to be closed before an election, as provided in this chapter.

D. No person may register within 30 days of any general or primary election held in the parish, provided that the registrar in the parish of Orleans be and he is hereby prohibited from making changes of addresses between the first and second primary. No act of any kind necessary or pertaining to the registration of voters shall be performed in any other place or in any other manner than as provided in this chapter. (As amended acts 1952, No. 249, sec. 1; acts 1954, No. 563, sec. 1.)

Yet, proponents of legislation, designed, it is said, to correct such alleged practices, do not want the corrective agents to be required to transact their business in public buildings. They do not want to apply to referees the very standards which they claim should be applied to State officials. Yet, without the Kefauver amendment, there is no guarantee that a referee would not be moving around from place to place, or holding the proceedings authorized in the back room of a store, or in some other secret place.

Mr. President, earlier during the course of my remarks I referred to the fact that this bill would accord to State officials a "right to oppose" findings made by a referee, which "right" would be more illusory than real. I shall return to that element in a few moments, but, first, I wish to point out that this "referee" proposal involves a complete and utter prostitution of the system of masters provided for under the Federal Rules of Civil Procedure. Proponents have made much of the fact that "referees" are involved. They have even had the temerity to state that this legislation involves merely applying the well-established system of special masters to voting rights. As usual, Mr. President, advocates of such an approach are, at best, only telling half the story.

The most prominent argument offered in justification of the "referee" system proposed herein is that reference of individual voting applicants to such "referees" would reduce the possibility of delay. As I understand their approach, they feel that individual appearances by applicants before Federal judges, particularly under circumstances assuring that such proceedings would be adversary, could result in some delay. Hence, they tell us, all they desire to do is to make it possible for the court to appoint "referees" to hear applicant in order to eliminate any delay. Referring matters to referees, it is stated, will clothe the proceeding in haste. I most respectfully submit that haste should not be the touchstone of any judicial proceeding, or even any quasi-judicial proceeding. However, throughout the fabric of arguments of proponents runs the same thread—namely, that the measure merely seeks to extend to voting rights cases powers which courts presently have in other cases—bankruptcy and accounts, for instance—to appoint special masters, or referees.

Mr. President, no new legislation is needed to make the use of special masters possible in voting rights cases. The Federal Rules of Civil Procedure, rule 53, presently permit courts to appoint special masters, or referees—and I quote from the rule:

> Each district court, with the concurrence of a majority of all the judges thereof may appoint one or more standing masters for its district.

In other words, Mr. President, district courts presently have the authority to appoint full-time, standing masters, or referees, upon a majority vote by all the judges thereof. Furthermore, and I read, again, from rule 53 of the Federal Rules of Civil Procedure:

> And the court in which any action is pending may appoint a special master therein.

Thus, even if a majority of a Federal district court should not desire to appoint a standing master, any judge of that court can appoint a special master to hear any cause pending before it.

Thus, under the present Federal rules, authority is present for the appointment of either standing masters, or special masters, or both.

Once this is realized, the question naturally arises, "Why, then, is this new authority presently demanded needed at all?"

The answer lies in the present requirements of rule 53 of the Federal Rules of Civil Procedure which specify that the appointment of a master is to be the exception and not the rule. The rule states:

> A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.

By the terms of the rule itself, Mr. President, a rule based upon general and well-understood practice before Federal courts prior to its formal adoption, references to masters are not to be undertaken on a wholesale basis. In the case of jury actions—and, as I have already stated, the proceedings contemplated here should be jury actions, since findings of fact are involved—references can be made only by showing that the "issues are complicated." However, even in nonjury actions, such as that contemplated under title VI of the bill, reference can be made "only upon a showing that some exceptional condition requires it."

Within the purview of rule 53, is the mere threat of delay grounds for the appointment of a master? In other words, are proponents of this bill being fully candid with us in stating that in order to avoid delay, the procedures of appointment "masters" or "referees" are justified? The answer is a most emphatic "No."

The cases decided by Federal courts demonstrate that a mere threat of delay is not a sufficient ground for reference to a special master. I refer specifically to the case of *Hartford-Empire Co.* v. *Shawkee Manufacturing Co., et al.*, 5 Federal Rules Decisions 46 in which the District Court for the Western District of Pennsylvania held:

> This order (requesting reference to a master) cannot be made. Reference to a special master is made, with a few rare exceptions, only in cases involving an accounting. It will be noted that the counterclaims of defendants are for damages, not for a mere accounting. The trial lists of this court bid fair to be heavy in the immediate and succeeding future, and the hearing in the present matter will undoubtedly be burdensome, but that does not present an "exceptional condition" such as contemplated by rule 53.

In other words, Mr. President, despite the indications from proponents of this legislation that their approach is really nothing new, the facts clearly demonstrate that the approach is a radical departure from the principles which have consistently governed proceedings before masters, at least since the adoption of the Federal Rules of Civil Procedure, and probably since long before that time.

This departure becomes obvious when it is understood, as I indicated earlier, that proceedings before any "referee" appointed under the terms of the measure would be ex parte.

Mr. President, I have dwelt in some detail upon the referee provisions of title VI, because I am convinced that appointment of referees under this bill would, indeed, be the rule instead of the exception. At this point, I wish to cover

for the Senate's benefit the "rights" defendants would have upon the submission of findings to the court by the referee.

As Senators will recall, I earlier pointed out that the "right" of defendants to be heard is more illusory than real. We have heard much about the *provision according* to the defendants 10 days in which to be heard on the referee's findings. This procedure is not quite as simple as proponents of the bill would have us believe. For one thing, there is no guarantee that the 10-day "show cause" period would be a minimum. Actually, it is the maximum, because the court could cut that period down to less than 1 hour if it so desired. The pertinent portion of the bill states:

> Upon receipt of such report, the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within 10 days or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report.

The key words are "or such shorter time as the court may fix." Thus, it is possible for the court to declare that the attorney general, or other appropriate defendant, shall have only 5 days, or 2 days, or 1 day, or 1 hour, in order to show cause why the referee's findings should not be made the findings of the court, and a decree issued based thereon. If the possibility of such a burdensome time limitation is coupled with the previously referred to provision which creates a presumption in favor of an applicant's statements before the referee, it will be easily seen that the rights accorded to defendants are narrow indeed.

But there are even more restrictions imposed.

First, the type and method of proof available to defendants to meet the referee's findings are severely circumscribed For example, as to issues of fact, the court can consider only two kinds of evidence:

First, duly verified copies of public records; and, second, affidavits of persons having personal knowledge of such facts or by statements or matters contained in such report.

The restrictive kinds of evidence which can be offered, plus the rigorous time limit imposed in the bill for such evidence to be gathered and placed in the required form, plus the presumption of validity given to ex parte statements of applicants, assure defendants that, although they are given the right of a "hearing," they are, in fact, being denied a fair hearing.

But, just to tie up any loose ends, there is another gadget provided to make things as hard as possible on defendants. The bill provides that the court, if it so wishes, can actually redelegate to the referee the job of hearing opposition to his own report. I read from the bottom of page 18 and the top of page 19 of the bill:

> The issues of fact and law raised by such exceptions shall be determined by the court, or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures described by the court.

Mr. President, how silly can we get? Just imagine giving authority to a voting referee, or, for that matter, any other "master," to hear opposition to his own findings. If this is fair, then, certainly, fairness does not have the same definition it once had.

Furthermore, under this redelegation clause, the referee would be entitled to rule upon issues of both fact and law; yet, nowhere in the bill does the requirement appear that the referee be learned in the law. As a matter of fact, prior to adoption of the committee amendments, there was not even the requirement of taking an oath imposed upon the referee.

Just how far do proponents of this legislation desire to go? Evidently they want to make it possible for a nonlawyer to be placed in the position of deciding not only issues of fact, but issues of law. Now, I am fully aware that on at least one occasion, on May 17, 1954, the Supreme Court abandoned stare decisis and the rules of law in order to apply psychological and sociological factors as determinative of legal issues, but I am not yet of the opinion that this departure has become the general and usual method of fixing rights and duties before all Federal courts.

Mr. President, this bill does not provide for due process of law; it does not even contain sensible procedural requirements.

It, instead, purports to accord such rights to individuals with one section, and then, in succeeding sections, completely dilutes such rights—dilutes them to a point where they no longer exist, as a practical matter.

Senators should note, too, that on page 19, further restrictions are imposed upon the rights of defendants in any such hearing as may be given them on a referee's report. The bill declares that:

> The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the referee.

Mr. President, this is ridiculous. The referee might decide that an applicant was literate if he could spell the word cat. On the other hand, in a prior proceeding before the appropriate State election official, evidence might have been adduced that conclusively showed that the applicant was not literate. In my State, applicants are required to fill out an application form. Yet, the use of any such previously-completed form, any prior evidence of lack of literacy, would be foreclosed in proceedings before a court on a referee's findings. The bill would require that the applicant's literacy be determined solely upon the basis of answers included in the report of the voting referee. Thus, if the referee merely asked the applicant to spell the word cat or the word dog, or should the applicant merely be required to recognize his own name, these things, alone, would be required to be used as the sole basis for determining literacy.

Senators should note, too, that this section declares that literacy shall be determined solely on the basis of answers included in the referee's report. The referee could have asked 500 questions to test the applicant's literacy, before getting an answer that would indicate literacy. Yet, he would not have to put before the court the 499 unsatisfactory questions and answers. He would only have to include the questions and answers he wanted to include, in which event only those answers could be considered.

To revert to a previous portion of the bill, it should be noted that the portions of title VI which deal with referees would come into play only in the event a court decided it wanted to appoint referees. As I indicated earlier, there is no doubt in my mind but that in almost every instance the court would so appoint referees, but the alternative should be examined as well.

In this connection, the language of the bill is clever, indeed. It states, in essence, that once the pattern or practice finding is made, then any person of the same color as the original plaintiff shall be entitled to an order declaring him qualified to vote, upon certain showings. The court, in other words, will not have any discretion at all insofar as other applicants are concerned, should they meet the requirements of the bill. Furthermore, this shall clause would impose upon the judge the duty of registering the applicant for the "longest period for which such applicant could have been registered or otherwise qualified under State law."

Mr. President, this is a direct and vicious attack upon the electoral systems of our 50 States. It constitutes, as a practical matter, a means by which the Federal Government, through the Federal courts, would fix the qualifications of electors, a right which is expressly reserved to the States under article I. The 15th amendment offers neither authority nor excuse for such action, nor does the 14th amendment. Their force and effect will have been exhausted by the court, once it finds a pattern or practice. Any action from that time forward would constitute Federal determinations of voting qualifications, a practice in direct contravention of the Constitution.

There are, of course, in the bill certain other little gadgets which require discussion. For example, there is a mandatory provisional voting section, plus discretionary provisional voting authority.

Under the bill, "any application filed 20 or more days prior to an election" entitles the applicant, as a matter of right, to a certificate permitting him to vote provisionally.

In my State, Mr. President, State law requires that the registration books be closed 30 days prior to an election. Yet, under the bill, as I interpret it, an applicant who, let us say, 22 days before an election, applies to a Federal court, will, per se, be entitled to a certificate entitling him to vote in that election. As I read the bill, there would be no need for a prior effort to register with State officials, should the application with the court be filed 20 or more days prior to an election. This is in direct conflict with State law as to the time of closing of registration books; and, furthermore, it would work a discrimination upon voters not a member of the class involved under

the pattern or practice finding, since members of that class would be entitled to vote in the election, although the registration books had been closed as to others. It would give Negro applicants a 10-day advantage over white citizens. As a matter of fact, Mr. President, the entire section is discriminatory, since it accords to Negroes denied registration a second "bite at the apple," while white people who have been refused registration are given no such preferential treatment.

Mr. ERVIN. Mr. President, will the Senator from Louisiana yield for a question relative to the statement he has just now made?

The PRESIDING OFFICER (Mr. BARTLETT in the chair). Does the Senator from Louisiana yield to the Senator from North Carolina?

Mr. ELLENDER. I yield.

Mr. ERVIN. In North Carolina we have a period of about 5 weeks in the month of May in which the books are open for the registration of persons who wish to vote in the primary. Then in the fall the registration books are open for another period of approximately 5 weeks, for the registration of voters who desire to vote in the general election. I ask the Senator from Louisiana whether, under this bill, white people would be compelled to present themselves for registration within one of those periods of 5 weeks, and would be denied the right to register at any other time?

Mr. ELLENDER. That is entirely correct. As I pointed out, in Louisiana if a person applies for registration to vote 29 days before an election is held, he is denied the right to vote. Yet, under this measure, if a Negro voter desired to do so, he could apply to register 20 days before the primary, and he would be accorded a right which would be denied to the white voters.

Mr. ERVIN. Furthermore, under this bill could not the Negro voter apply at any time within 1 year, and even after 1 year, until there had been a rescission by the court of its finding of the existence of such a pattern or practices?

Mr. ELLENDER. Yes. That is correct.

Mr. ERVIN. In other words, under this bill a colored man would have the right to register at virtually any time, whereas a white man would be restricted to registration during a certain limited period of time. Is that correct?

Mr. ELLENDER. That is correct, once such a pattern or practice were found and were made applicable.

Mr. ERVIN. The justification given for that is that thereby the law would be supposed to be giving equal protection of the laws to the members of both races?

Mr. ELLENDER. Yes. As I have pointed out, the act is discriminatory, without question.

And, Mr. President, what about this "provisional voting" procedure? The bill specifies that it is to be accomplished by impounding the ballots of individuals permitted to vote provisionally.

I should like to ask my friend, the Senator from North Carolina, to consider what would be the situation in his own State.

The bill specifies that the "provisional voting" procedure is to be accomplished by impounding the ballots of individuals who are to be permitted to vote provisionally. In my own State the paper ballot is no longer in use; our State law requires that voting machines be used. Just how is a tally on a voting machine to be "impounded"? The only method I can see is to require the individual who was permitted to vote provisionally to declare before officers of election or others the names of the candidates for whom he had voted. In that case, what would have happened to the secret ballot?

Here is a clear demonstration of the manner in which some rights are prejudiced at the expense of enforcing others. In other words, under this portion of the bill, the right of a voter to cast a secret ballot would become a second-class right.

Proponents of this legislation have cried great tears and have expressed the fear that without this bill, or some similar bill, Negro voters might be intimidated. If the proponents want to open the door to intimidation, if they really want to make intimidation of voters possible, then all they have to do is vote in favor of this "provisional voting" scheme. That language, coupled with the "impounding" provision, is an invitation to intimidation, particularly in States which use voting machines.

Talk about "equal protection of the laws," Mr. President. This bill denies "equality" to white people in my State. Should a registrar of voters deny registration to a white person, any such white person would have to be content with the remedies available to him under State law. But should a Negro be refused registration, he could, under this bill, run to a Federal court or a Federal referee, and, at the taxpayers' expense, have another chance to prove his qualifications—and to prove them under conditions which virtually assure the enfranchisement of myriads of persons not meeting bona fide State qualifications.

Mr. President, there is one other portion of title VI which I wish to discuss briefly, and I refer specifically to that portion appearing on page 20 of the bill, which reads as follows:

> The court may take any other action and may authorize such referee or such other person as it may designate to take any other action, appropriate or necessary to carry out the provisions of this subsection and to enforce its decrees.

I think it is very important that the legislative history of this one sentence makes it abundantly clear that in no way does the Congress intend for this sentence to authorize the use of Federal agents, or deputy marshals, to oversee elections.

As the distinguished and able attorney from Louisiana, the Honorable EDWIN E. WILLIS, who represents the congressional district in which I make my home, so that he is in effect my Congressman, pointed out on the floor of the House of Representatives on March 23, the legislative history of this sentence in the House makes this very clear.

As originally considered, this bill contained a provision under which the court could authorize any person or persons to attend at any time and place for holding any election at which any person named in the court's original or supplementary decree is entitled to vote and report to the court whether any such person had been denied the right to vote and whether any vote cast by any such person had not been properly counted.

This language appeared on page 3, lines 13 through 24 of H.R. 10035. Language along the same line appeared on page 5, lines 6 through 14 of H.R. 10625. It also appeared on page 5, line 9 through line 13 of H.R. 11160.

Congressman WILLIS, along with the distinguished chairman of the Rules Committee, Congressman SMITH, of Virginia, conferred with both Democratic and Republican leaders on this provision.

They pointed out that this provision was unprecedented, dangerous, and inflammatory, and that if a person with a voting certificate were denied the right to vote and/or his vote was not properly counted, the proper remedy would be a contempt citation.

They stated that they, of course, would move to strike this language or any similar language from the bill, and they also expressed the hope that such a move would be accepted.

Both Congressman WILLIS and Congressman SMITH later said they received the impression that their amendment would either be agreed to, or certainly not seriously challenged.

On Tuesday, March 15, 1960, Congressman MCCULLOCH, of Ohio, offered an amended version of H.R. 11160, intending to delete the provision of the bill referred to. This amendment appears on page 5655 of the CONGRESSIONAL RECORD of March 15. I quote from colloquy that appears on page 5657 of the CONGRESSIONAL RECORD:

> Mr. CELLER. Having been reminded that H.R. 11160 contains the verbiage of the gentleman's amendment, do I understand the gentleman has stricken out on page 5 lines 9 to 13, inclusive?
>
> Mr. MCCULLOCH. That is correct. That material changes the bill and takes away from the referee the authority in a field and in a manner which has been objected to, so seriously, by our distinguished colleagues, the gentleman from Louisiana [Mr. WILLIS] and the gentleman from Virginia [Mr. SMITH].
>
> Mr. CELLER. The court, of course, has inherent power, but you have by striking out that language which was originally in the bill given something in the nature of an admonition to the court that might have the effect of curbing that power so that the court—and I say this for the edification of those who might oppose this amendment—would not actually have the voting referee substituted for the State official in the actual counting of the ballots.
>
> Mr. MCCULLOCH. That is right, but I want to make the record unmistakably clear.
>
> It is my intent to lessen the authority that is inherent in courts of equity to effectuate their decrees by whatever manner is inherent in the Anglo-Saxon system of jurisprudence.

In reading the amendment, the House Clerk, nevertheless, read the language to

be deleted, but both Congressman HALLECK, the minority leader, and the ranking member of the Judiciary Committee, Congressman MCCULLOCH, insisted that it was the intent of the House to delete that language.

It was then that the chairman of the Judiciary Committee, Congressman CELLER, of New York, in light of the parliamentary situation, offered a substitute to the McCulloch amendment. This substitute definitely did not contain the general provision under discussion.

It is clear, then, without the slightest doubt, that the proponents of this bill in the House of Representatives, those from both sides of the aisle, agreed to remove and did remove this obnoxious and unnecessary provision without the necessity of either Congressman SMITH or Congressman WILLIS having to introduce an amendment to accomplish the same purpose.

However, an amendment was then offered by Congressman O'HARA of Michigan, which appears on page 5755 of the CONGRESSIONAL RECORD of March 16, 1960.

It can be seen, on page 5767 of the RECORD, that the debate on the O'Hara amendment was limited, that it ended at 3:15 p.m. of that day, and the very few Members standing and desiring to talk on the amendment, as distinguished from those who wished to extend the remarks, were limited to 3 minutes.

Mr. JOHNSON of Texas. Mr. President, will the Senator yield to me, with the understanding that he will not lose the floor?

Mr. ELLENDER. I yield.

Mr. JOHNSON of Texas. I wonder if the Senator would yield to me for the purpose of suggesting the absence of a quorum, with the understanding that he would not lose the floor.

Mr. ELLENDER. Very well.

Mr. JOHNSON of Texas. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW, ORDER FOR RECESS AT 12:30 TOMORROW, AND ORDER FOR RECOGNITION OF THE SENATOR FROM LOUISIANA TOMORROW

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that when the Senate concludes its deliberations today it stand in recess until 10 o'clock tomorrow morning; and I further ask unanimous consent that at 12:30 o'clock tomorrow the Senate stand in recess subject to the call of the Chair, and, when the Senate resumes its session, following the call of the Chair, after we have had the joint meeting with the House of Representatives, that the Senator from Louisiana [Mr. ELLENDER] be recognized for not to exceed 3 hours.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Texas? The Chair hears none, and it is so ordered.

COMMITTEE MEETING DURING SENATE SESSION TOMORROW

On request of Mr. JOHNSON of Texas, and by unanimous consent, the Committee on Agriculture and Forestry was authorized to meet during the session of the Senate tomorrow.

LEGISLATIVE PROGRAM

Mr. JOHNSON of Texas. Mr. President, I announce that we anticipate no yea-and-nay votes this evening. The Senate will meet at 10 o'clock in the morning. We will have the usual morning hour, and transact business up until 12:30. Senators may transact any business they wish which may come before the Senate. At 12:30 tomorrow we will go to the other body for a joint meeting, to hear a distinguished Latin-American visitor. We will return as soon as that joint meeting is over.

When the Senate reconvenes, the Senator from Louisiana [Mr. ELLENDER] will be recognized for 3 hours, at the conclusion of which time I would anticipate the minority leader would make a motion to table the pending motion.

CIVIL RIGHTS ACT OF 1960

The Senate resumed the consideration of the bill (H.R. 8601) to enforce constitutional rights, and for other purposes.

Mr. ELLENDER. The O'Hara amendment had not been made available to all Members, and it was only after debate had already been limited that most Members, including Congressmen WILLIS and SMITH, had an opportunity to study it. It was during this limited time for debate that an effort was made to develop legislative intent with respect to the O'Hara amendment.

This appears on pages 5766–5768 of the RECORD of Wednesday, March 16. Many Congressmen who opposed this complete package of civil rights bills were shocked beyond words to discover that they were precluded, because of the parliamentary situation, to offer corrective amendments.

Congressman WILLIS raised the issue as to whether or not the purpose of the amendment was to restore the deleted language. Congressman SMITH attempted to introduce a corrective amendment but was ruled out of order because the amendment would have been in the third degree.

However, at this point, Congressman MCCULLOCH, of Ohio, assured opponents of this language that there was no intent to restore the deleted language.

He said:

Mr. Chairman, again I want to say that which is known to all the good lawyers on the committee, that since there was first a court of chancery in England, a court of conscience, if you please, and ever since we have had a court of equity or chancery in America, that court has had the inherent power to do all things necessary to make effective its orders and decrees. Even without the language which has so disgusted my good friend and prominent lawyer, the gentleman from Louisiana, the authority would have been there nonetheless. However, Mr. Chairman, I was ready, willing, and anxious to request my very good friend from Louisiana to strike out the major part of the language to which he referred in H.R. 10625, for the very reason which I suggest. We have been marching up the hill and we have been marching down again. I for one in the final analysis would be satisfied to depend upon the inherent authority of the court, if that be necessary.

In view of that statement, further attempts to clarify the language were not continued.

However, I want it to be very clear, for the sake of legislative history, that this provision which would authorize the sending of Federal agents to police elections is out of the bill, and that the court has no authority under color of this bill to send Federal agents to the polling places and to actually conduct elections.

Mr. President, I would now like to address my remarks to a broader field—the entire field which is covered by the measure which is pending before us today. This measure, which its proponents contend is a civil rights bill, is, in my opinion, nothing more or less than political claptrap.

Mr. President, the Senate is today engaged in one of the most momentous debates of its long history. These hallowed Halls have seen many climactic days in the history of our young Republic. Robert Morris, John C. Calhoun, Daniel Webster, Robert Taft, and all the other great names of the U.S. Senate met here and discussed the problems which have faced our country over the years.

I say here and now that the subject now under consideration by the Senate is just as important, just as far-reaching, as any matter discussed by the Senate in all its glorious history.

The so-called liberals like to say that the voting rights of minorities are at stake. This is pure subterfuge. The issue really at stake is whether or not the Federal Government is going to force the individual States to surrender a large measure of the sovereignty that they still possess.

Also at stake is whether or not this country shall abandon those principles which have brought us progress and wealth—the right of individuals to live their lives in peace, without heavy-handed Federal control over their daily activities.

Why, I ask, should it be necessary to eviscerate our constitution and desecrate the sovereignties of the 50 State governments, which is apparently what the proponents of all these so-called civil rights measures seek.

Is it not plain, Mr. President, that in the guise of protecting and securing the civil rights of a few Americans, we are about to violate and compromise the civil rights of our entire populace?

I would never raise my voice in objection to, or lift my hand in obstruction of, a legislative program which would seek to secure the maximum exercise of

the electoral franchise on the part of all qualified voters, irrespective of race, color, creed, or any other reasonable criteria—provided the guarantee of the right to vote were accomplished in a constitutional manner and in compliance with the procedures embodied in the U.S. Constitution. As a matter of fact, Mr. President, we already have in the law the machinery whereby any person who has been denied the right to vote in a Federal election, can obtain an injunction through a Federal court proceeding—either directly, on his own behalf, or by way of the Justice Department—directed to State and local election officials, and thereby enforce his constitutional, Federal right to vote.

The measure we now consider will, if enacted, place the Federal Government in the position of being the sole judge and director of qualification of a certain class of voters—a function which is clearly in violation, not only of the Constitution, but of the concepts of our Founding Fathers who wrote the Constitution.

Debates of the constitutional-drafting period show very clearly that if this right of the individual States to determine voter qualification had not been left in the hands of the sovereign States, the Constitution would never have been ratified.

It is my hope that I will have the opportunity during the course of this debate to discuss in more detail the patent inequities and—even more important—the latent dangers that are so neatly tucked away in this so-called right to vote legislation. Before embarking upon that subject, however, an even more basic and fundamental aspect of the problem before the Senate requires our attention and scrutiny. I refer to the necessity for a full discussion and analysis of those provisions of our Constitution which relate directly to the election of Federal officers—those portions of the Constitution dealing with the qualifications of electors, and with the fixing of the times, places and manner of holding elections.

Section 2 of article I of our Constitution provides that:

> The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Section 4 of article I proclaims that:

> The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

There are also the two amendments which have to some extent contracted the otherwise unqualified right of the States, as guaranteed in section 2 of article I, to establish the qualifications of voters—I refer to the 15th amendment, which provides that a citizen of the United States may not be denied the right to vote on account of race, color, or previous condition of servitude; and the 19th amendment, which establishes the same protection against discrimination based on sex. And then, of course, there is the 17th amendment, adopted in 1913, whereby the right of the States to establish the qualifications of electors was again reaffirmed, this time with respect to the choosing of U.S. Senators.

Mr. President, our Nation has profited greatly from the rich heritage of learning left to us from the great constitutional lawyers of years gone by. One of the greatest of those illustrious pioneers of American constitutional history was George Ticknor Curtis. Mr. Curtis' name will live forever in the annals of American history for many reasons; first and foremost, of course, because he was the author of two monumental works; the first, which was to become a standard authority, ranking alongside of Justice Storey's "Commentaries on the Constitution," was published in 1854 in two volumes and entitled "History of the Constitution of the United States." The second of this great constitutional lawyer's legal compositions was entitled "Constitutional History of the United States," published in 1896, 2 years after his death. Mr. Curtis also will be remembered by students of American history for his able and successful defense of President Andrew Johnson in the impeachment proceedings instituted against the American Chief Executive in 1867; George Ticknor Curtis is remembered, too, for the brilliant and cogent argument he presented to the U.S. Supreme Court on December 18, 1856, in the famed Dred Scott case.

During the course of his presentation to the Supreme Court, in the Dred Scott case, Mr. Curtis made this significant statement as a preface to his analysis and interpretation of the Constitutional provisions in issue in the Dred Scott case—that is, the provisions of our Constitution relating to the status and government of American territories:

> I wish, in the next place, to say, may it please your Honors, what indeed is obvious to everyone—that this is eminently a historical question. But I shall press that consideration somewhat further than it is generally carried on this subject, and much further than it has been carried by the counsel for the defendant in error; for I believe it to be true of this, as it is of almost all questions of power arising under the Constitution, that when you have once ascertained the historical facts out of which the particular provision arose, and have placed those facts in their true historical relations, you have gone far toward deciding the whole controversy. So true is it that every power and function of this Government had its origin in some previously existing facts of the national history, or in some then existing state of things, that it is impossible to approach one of these questions as one of mere theory, or to solve it by the aid of any merely speculative reasoning. Hence it is eminently necessary on all occasions to ascertain the history of the subject supposed to be involved in a controverted power of Congress, and, above all, to approach it with the single purpose of drawing that deduction which the constitutional history of the country clearly warrants. ("Constitutional History of the United States," George Ticknor Curtis, p. 502.)

Mr. President, keeping these words of George Ticknor Curtis in mind, I shall ask the indulgence of the Senate while I embark upon the task of reviewing the circumstances surrounding the genesis of the constitutional provisions at issue in the right to vote legislation now before the Senate. It is with the utmost humility that I undertake the enormous assignment of refreshing the memories of Members of the U.S. Congress, and the public at large, with the historical backdrop against which the language of article I, sections 2 and 4, of our Constitution was framed.

It was no easy job, I can assure Senators, to research and assemble the vast amount of data that I am about to present to the Senate. It was a monumental task, but it will be well worth the effort if it helps to awaken in Senators a better understanding and awareness of the precarious, perilous ground we are about to tread upon—to point up the misguided, imprudent, unwise course that is being urged upon us.

It is sheer folly, Mr. President, for the Congress of the United States to seek to enact laws aimed at undermining and destroying our one great constitutional bulwark against despotism—our time-tested system of local elections controlled and operated by the 50 sovereign State governments, free from coercion or subversion from a Federal bureaucracy. Heaven help us if this precious birthright is lost forever to us and and to our posterity because we here today are unable to distinguish between political expediency and commonsense.

Mr. President, a study of colonial history reveals that regulation of suffrage was one of the first tasks to concern the American pioneers. From their inception the Colonies maintained qualifications of voters. As I shall point out during the course of these remarks, when the Colonies formed the original 13 States of our Union, they still jealously and zealously guarded their right to prescribe qualifications for voting. Even a cursory reading of the discussions that took place during the Constitutional Convention at Philadelphia, and of the debates in the 13 States while the proposed Constitution was up for ratification, leads to the inescapable conclusion that a majority of the 13 States would never have formed a Union and bound themselves under the Federal Constitution if clear and unmistakable language had not been included to guarantee to the respective States the right to establish qualifications of electors. Nor is there any doubt, Mr. President, that the 13 Colonies did not intend to surrender to the Federal Government their primary right to control the time, manner, and places of holding elections; all evidence points to the unmistakable conclusion that they intended to vest in the Central Government only secondary authority to regulate elections, limited to those situations where extraordinary circumstances prevailed or where the States refused to conduct elections for Members of the House of Representatives and thereby threatened the very existence of the Federal legislative branch.

Later during these remarks I shall discuss more fully the meaning given to section 4 of article I by the framers of our

Constitution. Right now I want to direct the attention of Senators to the interpretation placed by our Founding Fathers on the language found in section 2 of article I—the requirement that "the Electors in each State shall have the qualifications requisite for Electors of the most numerous Branch of the State Legislature."

As early as 1750 there were different qualifications for voting in the different Colonies. I quote from "Formation of the Union," 1750–1829, by Hart, page 15:

In each there was an elective legislature; in each the suffrage was very limited; everywhere the ownership of land in freehold or other property, or the occupancy of a house was a requisite, just as it was in England for the country suffrage. In many cases there was an additional provision that the voter must possess a specified large quantity of land or must pay specified taxes. In some Colonies there was a religious requirement.

Mind you, Mr. President, all these requirements I have just mentioned were prerequisites for the exercise of the voting privilege.

While there were few specific provisions concerning suffrage in the charters of the Colonies, popular elections existed in each of the Colonies from the earliest date down to the Revolution. Popularly elected assemblies carried on local government. Virginia had a House of Burgesses as early as July 30, 1619.

What was the first consideration of these colonial groups who were fiercely protective of their rights?

One of the first tasks of these colonial assemblies was to regulate the elective franchise. See McCulloch, "Suffrage and Its Problems," at page 18.

While the qualifications were vague and indefinite, there were many requirements, each a proof of the local regulation of voting qualifications. Even the Crown and the English Parliament made no serious attempt to modify or harmonize the various suffrage regulations. I quote from the same volume, page 19:

This left each colony practically free to pass its own laws providing for the franchise. By the time of the Revolution this practice became thoroughly established, thus allowing each commonwealth to make suffrage laws to fit its peculiar electoral problem.

Down to 1776 there were seven qualifications for the elective franchise. The outstanding one was the landed-property qualification, which probably arose because of the business corporation-like nature of the early Colonies. A piece of land was considered as giving a person the freedom of the company, as provided by Massachusetts in 1621, just as a block of stock entitles its holder to vote in a corporation.

Porter, "History of Suffrage in the United States," pages 3 and 4:

But this very simple test of property-holding could not long hold out alone, although it was the first and the dominating consideration for almost 200 years following. The population became so complex, the interests of colonists expanded so far beyond mere commercial enterprise, that other standards of fitness for participation in the affairs of the community were sought out and established. Strict limitations had been put upon the right to join the company, and after the companies ceased to exist and the Colonies became exclusively political institutions, the same limitations were carried over for the suffrage with some elaboration. They dealt with all the various things which are supposed to determine capacity to take intelligent interest in community affairs. Race, color, sex, age, religion, and residence were now investigated before the applicant was admitted to the suffrage. The theory was that only those who clearly had an interest in the Colony—measured in terms of tried standards—should exercise the right of suffrage.

There we find a yardstick or a method of providing qualifications for voters during colonial days.

Virginia had varying requirements. In 1655 a voter had to be a habitant and a householder; in 1699 he had to be 21 years of age, a male habitant and freeholder, papists barred. By 1762 this had been further refined by the freeholder being particularly required to own 50 acres, or 25 acres and house 12 by 12.

Massachusetts first required religious standards, Puritan and Orthodox, in 1631. By 1691 Massachusetts required a voter to be English and to own 40 shillings freehold or £40 of property.

Connecticut in 1638 required a voter to be a habitant, a Puritan, and a freeman, and varied this by 1702 to specify that he have 40 shillings freehold or £40 of property.

Rhode Island, as early as 1665 required a competent estate and barred Christian papists. By 1767 Rhode Island added to this requirement of living in a town, plus owning 40 shillings freehold or £40 of property.

New Hampshire in 1680 required that a voter be 24 years of age, English, Protestant, and have an estate of £20. By 1728 the last requirement was increased to £50 realty.

North Carolina in 1669 required a voter to be a deist and to have a 50-acre freehold. By 1760 this had varied. The qualifications were 21 years of age, 1½ years residence, British nationality, and a 50-acre freehold.

South Carolina in 1669 required a person to be a deist and to have 50 acres freehold. By 1759 a South Carolina voter had to be white and 21 years of age, Protestant, and have a settled freehold.

Georgia demanded a man to be 21 years of age and to have 50 acres of land, papists barred. In 1775 the land requirement took on a subtle change. It was replaced by the word "taxpayer," plus one-half year's residence required, and papists barred.

Pennsylvania in 1683 required a voter to own 100 acres, 10 cultivated—or 50 acres, 20 cultivated—or taxes. In 1700 Pennsylvania required a man to be 21 years of age, a 2-year resident, English, and own 50 acres, 12 cultivated—or £50 in property.

Delaware, in 1701, had a 2-year residence requirement, 21-year-age requirement, and land ownership of 50 acres—12 cultivated, or £50 in property. By 1733 British citizenship had been added to the list.

Maryland's only requisite in 1637 was that voters be freemen. In 1718, Maryland had barred Catholics and required 50 acres or £40 property.

New York in 1683 accepted a vote from any freeholder. In 1701, 21 years age requisite and £40 realty was necessary, and Papists and Jews were barred.

New Jersey in 1668 allowed any freeholder to vote. In 1725 that freeholder had to be a 1-year resident, and must own 100 acres or £50 of property.

It is interesting to regard some of the varying reasons for the above requirements. The very fact that they have varied in each State with the particular conditions of growth and the existing population adds undeniable power to the case I am presenting for each State in the Union to continue to have the right to judge its own needs and to provide therefor.

I read from Porter's "History of Suffrage in the United States," pages 4 and 5:

Standards of character and fitness varied from one part of the country to another. In Massachusetts the Puritans believed that only by restricting suffrage to men in their churches could the future well-being of the colony be insured. The problem of the "right" to vote became distinctly subordinate. They restricted the suffrage for the good of the community. The fact that their standard of good character (church membership) was narrow is not at all surprising. The character of the man's employment was often considered a criterion of his ability to vote intelligently, and thus college men and clerical officers were presumed to be especially fit for the suffrage.

The philosophy of suffrage has always been more or less opportunistic, if the word is permissible. Suffrage qualifications are determined for decidedly materialistic considerations, and then a theory is evolved to suit the situation. In the early days riot and disorder might accompany an election. The authorities would thereupon fix the qualifications so that the disorderly people could not vote next time. Then would come the theory to justify it—only those owning a certain number of acres would be considered fit to vote, only those of a certain religious faith, etc. Unquestionably this has happened in times of stress, for theory did not come to be the preliminary determining factor until complete peace and order prevailed, and even then theory was not uncolored by materialistic consideration. Suffrage limitations were bound to adapt themselves to social and economic conditions. In rural Virginia the freehold requirement of 50 acres excluded very few of the best type of men. But such a requirement in an urban community would have been intolerable. Obviously an absolute criterion could not obtain. It became necessary to adopt whatever criterion was calculated to embrace the best men.

Moral qualifications were restricted almost exclusively to New England. It was sometimes necessary for the voter to show proof of his good character. At other times if one were accused of improper conduct it would cost him his vote, although the particular offense was not mentioned in the law. In the South there were restrictions against men of certain race—foreigners and Negroes were excluded.

I read further from Porter's "History of Suffrage," bottom of page 5 and all of page 6:

All of the restrictions and qualifications can be seen to support one of two fundamental principles: One may be called the theory of right and the other the theory of the good of the State. Every qualification imposed had one of these two principles in view. Either it was established in order to

fulfill the right which certain people were supposed to have, or else it was established simply in order to serve the best interest of the State. It might have been said that a man had a right to vote because he owned property, or because he was a resident, or because he paid taxes, or simply because the right to vote was a natural right. And this would be the guiding consideration without regard to the effect it might have on the well-being of the community. Thus in some places nonconformists were allowed to vote because their property right was recognized. Nonresidents were permitted to vote where they owned property solely because they were supposed to have a right to vote on account of their holdings. This theory of right was the first to appear and has always persisted. Each generation would seek to add a new subhead to the title, as it were, and base a right to vote on some new ground.

The other great principle or theory had to do with the good of the State. It developed as soon as the narrow business-corporation concept was abandoned, and it was most emphasized by the Puritans. It continues to the present day but has never been entirely divorced from the theory of right. Under this theory of the good of the State men were excluded because they were not church members, because they were criminals, because they had not been residents a long-enough time. It is not always possible to classify every restriction definitely, but it may be said that one of these two theories controls every modification of the suffrage.

Mr. President, in the North, there were no race qualifications, because the few free Negroes scattered through the northern Colonies seemed to have caused little alarm along suffrage lines. North Carolina, Georgia, South Carolina, and Virginia were the only Colonies which disfranchised Negroes before the time of the Revolution—showing that either very few of them tried to vote or there was little aversion to it, the former probably being correct. At any rate, no race issue was injected generally into the suffrage regulations. Another generation saw a marked change.

In none of the Colonies except Pennsylvania was there rigid residence requirement of 2 years. And why the particular need there, true locally, yet not present elsewhere? Probably because of the conservative proprietor's desire to limit the influence of the many recent immigrants.

The property test was the most frequent and weightiest qualification. The cheapness of land led, in some instances, to the requirement above stated, namely, that the land be worth a certain sum in money or produce a certain income. Again we see the ever-present variations in the different Colonies. In Georgia there could not be the same money value requirement that there could be in more thickly populated New England; and, conversely, a voter in crowded New England could not have been required to own the same quantity of land that a voter in sparsely settled Georgia could be required to own. In Virginia, the varying standard of 50 acres of land, or 25 acres of land being worked and occupied by a house 12 feet square, or a town lot with a house of similar dimensions, was the answer to the rural-versus-urban problem. The city dwellers could not acquire land to a broad extent, and the rural dwellers resented having a value fixation set on the land to be held.

Five of the Colonies allowed the substitution of personal property for real estate.

I read now from Porter's "History of Suffrage in the United States," page 9:

This indicates a distinct concession of the urban communities, and it is significant that four of these States are in the small New England group, where the supply of real estate was limited. This adaptation of the suffrage qualification to the particular economic situation illustrates the willingness of men to adjust their ideas of what is fundamentally right to the needs of the dominant group.

The next breakdown in this type of requirement is from personal property to taxpaying. As conditions change, a trend emerges, the picture alters, and the statutory machinery with which we are equipped permits each State to shift or vary its position with the times.

Religious tests were decisive in New England, and were common everywhere except in Pennsylvania. In the South, Papists were usually specifically barred. New York barred Jews. Maryland also barred Catholics. Massachusetts supplemented the religious tests by moral character qualifications. Later a property qualification was inserted as an alternative. Later the religious test disappeared. South Carolina, with her requirement that a voter acknowledge the being of God, was the last State to have the statutory religious standards for suffrage and religion as a qualification for voting pass out with the colonial period.

Citizenship and residence were of comparatively little importance in a new country, predominantly British.

Before turning to the Articles of Confederation and our Constitution, the following words concerning voting qualifications in the Colonies seem particularly appropriate:

It is of moment to note that there were no efforts at uniformity in the regulation of suffrage. In each colony by charter, or more often by acts of the assembly, the elective franchise was controlled independently. This commonwealth treatment of suffrage was the natural result of colonial history. So thoroughly grounded was this policy that when the Colonies seized sovereignty and organized a Federal Government the suffrage program was undisturbed. It continued as the basic foundation on which all Federal elections must rest. (See McCulloch, "Suffrage and Its Problems," p. 29).

The truth of the proposition that each State best knows its own conditions and is best equipped to handle them, is shown by the direction of the Continental Congress, on May 10, 1776, following the outbreak of the Revolution, to each of the Colonies to "adopt such governments as shall best conduce to the happiness and safety of their constituents in particular, and America in general"—Hart, "Formation of the Union," 1750–1829 at page 89. Following these instructions, the Colonies had already begun, before July 4, 1776, to draw up written instruments of government. I now desire to read a few paragraphs from McCulloch on "Suffrage and Its Problems." I read from page 30, the first paragraph:

With the separation from the mother country came very little change for the Colonies severally. The Union took the place of the Crown, while the various commonwealth governments went on very much as before. Therefore, suffrage regulations were not disturbed at all; each commonwealth continued to regulate the elective franchise independently. The several States sought directions of the Continental Congress as to framing constitutions to replace the old charters which had been granted by the King.

But after this had been done, the two sets of governments moved along independently. The Central Government under the Articles of Confederation interfered with the States as little as possible, and they do not seem to have looked to it even for advice.

The only point at which the two governments could touch even indirectly on suffrage matters was article V, which provided that the delegates to the Confederation Congress should be "appointed in such matter as the legislatures of each State should direct."

Also, quoting directly from the Articles of Confederation, and to demonstrate the doctrines that remained ever uppermost in the minds of the founders of our country, I quote article II:

Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled.

I now read from the "Federalist Articles of Confederation," article V, the first paragraph:

For the more convenient management of the general interest of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year." Also:

In determining questions in the United States in Congress assembled, each State shall have one vote.

The above provisions show clearly that matters of voting qualifications were to be left strictly to each State. The Articles of Confederation were inadequate and hurried, and later proved insufficient to cope with the changing United States and its manifold problems. A new and farsighted instrument was needed, a considered and well-debated structure built on framework with a future. But, it is noteworthy, before we turn from the Articles of Confederation, that even though the country was in the midst of revolution, torn by varying doctrines and lacking in all organization at the time they were written, there was one thing that was not left out. Many important things were left out, much was left a blank, but even in a time of crisis these men, who were struggling for a workable governing organ to suit their needs and their hopes, kept one thing before them, the inviolable right of each State to determine the qualification of its voters and to control its own elections. They did not fail to preserve this right in the articles they drafted.

When the Articles of Confederation, which were adopted in time of stress without full cognizance of the problems to be solved and with the States themselves ill defined geographically

and politically, proved unsatisfactory and insufficient, it was suggested by Hamilton in 1780, and later by Tom Paine, that a convention be called to revise the Articles of Confederation, and to draft a Constitution of the United States of America.

Let us go back to that convention. There is drama in the air. Vital provisions for the constitutional structure of a new country are in the making. Each delegate has his own theories, his own pet beliefs to advance. All are filled with a desire for the best in Government for their new country.

Maj. William Pierce, of Georgia, made some notes of the membership of the convention. Among those historically well known to us today who were prominent in drafting provisions affecting voting qualifications was Rufus King, about whom Major Pierce said:

Mr. King is a man much distinguished for his eloquence and great parliamentary talents. He was educated in Massachusetts, and is said to have good classical as well as legal knowledge. He has served for 3 years in the Congress of the United States with great and deserved applause, and is at this time high in the confidence and approbation of his countrymen. This gentleman is about 33 years of age, about 5 feet 10 inches high, well formed, a handsome face, with a strong expressive eye, and a sweet high-toned voice. In his public speaking there is something peculiarly strong and rich in his expression, clear, and convincing in his arguments, rapid and irresistible at times in his eloquence but he is not always equal. His action is natural, swimming, and graceful, but there is a rudeness of manner sometimes accompanying it. But take him tout en semble, he may with propriety be ranked among the luminaries of the present age ("U.S. Formation of the Union," documents, p. 96).

There was Nat Gorham, about whom it is said:

Mr. Gorham is a merchant in Boston, high in reputation, and much in the esteem of his countrymen. He is a man of very good sense, but not much improved in his education. He is eloquent and easy in public debate, but has nothing fashionable or elegant in his style; all he aims at is to convince, and where he fails it never is from his auditory not understanding him, for no man is more perspicuous and full. He has been President of Congress, and 3 years a Member of that body. Mr. Gorham is about 46 years of age, rather lusty, and has an agreeable and pleasing manner ("U.S. Formation of the Union," documents, p. 96).

One of the high lights was Alexander Hamilton.

Colonel Hamilton is deservedly celebrated for his talents. He is a practitioner of the law, and reputed to be a finished scholar. To a clear and strong judgment he unites the ornaments of fancy, and whilst he is able, convincing, and engaging in his eloquence the heart and head sympathize in approving him. Yet there is something too feeble in his voice to be equal to the strains of oratory; it is my opinion that he is rather a convincing speaker, than a blazing orator. Colonel Hamilton requires time to think, he inquires into every part of his subject with the searching of philosophy, and when he comes forward he comes highly charged with interesting matter, there is no skimming over the surface of a subject with him, he must sink to the bottom to see what foundation it rests on. His language is not always equal, sometimes didactic like Bolingbroke's, at others light and tripping like Stern's. His eloquence is not so defusive as to trifle with the senses, but he rambles just enough to strike and keep up the attention. He is about 33 years old, of small stature, and lean. His manners are tinctured with stiffness, and sometimes with a degree of vanity that is highly disagreeable ("U.S. Formation of the Union," documents, p. 98).

From Connecticut came Oliver W. Ellsworth, who was on the committee of detail charged with forcing the provisions affecting elections:

Mr. Ellsworth is a judge of the Supreme Court in Connecticut; he is a gentleman of a clear, deep, and copious understanding, eloquent, and connected in public debate, and always attentive to his duty. He is very happy in a reply, and choice in selecting such parts of his adversary's arguments as he finds make the strongest impressions, in order to take off the force of them, so as to admit the power of his own. Mr. Ellsworth is about 37 years of age, a man much respected for his integrity, and venerated for his abilities ("U.S. Formation," supra, p. 98).

From Pennsylvania, on this committee, came Mr. James Wilson:

Mr. Wilson ranks among the foremost in legal and political knowledge. He has joined to a fine genius all that can set him off and show him to advantage. He is well acquainted with man, and understands all the passions that influence him. Government seems to have been his peculiar study, all the political institutions of the world he knows in detail, and can trace the causes and effects of every revolution from the earliest stages of the Grecian commonwealth down to the present time. No man is more clear, copious, and comprehensive than Mr. Wilson, yet he is no great orator. He draws the attention not by the charm of his eloquence, but by the force of his reasoning. He is about 45 years old ("U.S. Formation, supra, p. 101).

From Virginia came James Madison and Edmund Randolph:

Mr. Madison is a character who has long been in public life; and what is very remarkable, every person seems to acknowledge his greatness. He blends together the profound politician with the scholar. In the management of every great question he evidently took the lead in the convention, and though he cannot be called an orator, he is a most agreeable, eloquent, and convincing speaker. From a spirit of industry and application which he possesses in a most eminent degree, he always comes forward the best informed man of any point in debate. The affairs of the United States, he perhaps, has the most correct knowledge of, of any man in the Union. He has been twice a Member of Congress, and was always thought one of the ablest Members that ever sat in that Council, Mr. Madison is about 37 years of age, a gentleman of great modesty, with a remarkable sweet temper. He is easy and unreserved among his acquaintance, and has a most agreeable style of conversation ("U.S. Formation," supra, p. 104).

Mr. Randolph is Governor of Virginia, a young gentleman in whom unite all the accomplishments of a scholar and a statesman. He came forward with the postulate, or first principles, on which the convention acted, and he supported them with a force of eloquence and reasoning that did him great honor. He has a most harmonious voice, a fine person, and striking manners. Mr. Randolph is about 32 years of age ("U.S. Formation," supra, p. 105).

Robert Morris, with James Wilson, Benjamin Franklin, Gouverneur Morris, and others, represented Pennsylvania:

Robert Morris is a merchant of great eminence and wealth; an able financier, and a worthy patriot. He has an understanding equal to any public object, and possesses an energy of mind that few men can boast of. Although he is not learned, yet he is as great as those who are. I am told that when he speaks in the Assembly of Pennsylvania, that he bears down all before him. What could have been his reason for not speaking in the convention I know not, but he never once spoke on any point. This gentleman is about 50 years old ("U.S. Formation," supra, p. 101).

These were among the men who drafted our Constitution.

On May 29, 1787, Edmund Randolph presented the following resolution:

Resolved therefore, That the rights of suffrage in the National Legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

Resolved, That the National Legislature ought to consist of two branches.

Resolved, That the Members of the first branch of the National Legislature ought to be elected by the people of the several States every ——— for the term of ——— ("U.S. Formation," supra, p. 116).

Then Mr. Charles Pickney laid before the House the draft of a Federal Government which he had prepared, to be agreed upon between the free and independent States of America ("U.S. Formation of the Union," p. 119).

By all these statesmen the United States was referred to as a Union of free and independent States, a group of varying entities with varying problems, soils, industries, populations, having in mind future additions of more States, united for the common good of all.

Article III of Mr. Pickney's draft reads: "The Members of the House of Delegates shall be chosen every ——— year by the people of the several States; and the qualifications of the electors shall be the same as those of the electors in the several States for their legislatures" (Elliott, "Constitutional Debates," vol. 1 (1st ed.) p. 145).

Pickney also provided in article 5 of his plan:

Each State shall precribe the time and manner of holding elections by the people for the House of Delegates. (See III Records of the Federal Convention, p. 597—App. D.)

Alexander Hamilton's suggested provision was a general one:

III. The Assembly to consist of persons elected by the people to serve for 3 years ("U.S. Formation of the Union," p. 979).

When Mr. Randolph's plan was considered, what was the feeling concerning the provision for election of Members of the first branch of the National Legislature by the people of the several States? The discussion is illuminating in showing the angles considered, which make clear the meaning of the provisions ultimately adopted.

Mr. Sherman opposed the election by the people, insisting that it ought to be by the State legislature. The people, he said, immediately should have as little to do as may be about the Government. They want information and are constantly liable to be misled.

Mr. GERRY. The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots.

In Massachusetts it had been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men, and which no one on the

spot can refute. One principal evil arises from the want of due provision for those employed in the administration of government. It would seem to be a maxim of democracy to starve the public servants. He mentioned the popular clamor in Massachusetts for the reduction of salaries and the attack made on that of the Government though secured by the spirit of the Constitution itself. He had, he said, been too republican heretofore: He was still, however, republican, but had been taught by experience the danger of the leveling spirit.

Mr. President, I may say the word "republican" as there used was spelled with a small "r," not with a capital "R."

Mr. Mason argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the Government. It was, so to speak, to be our house of commons—it ought to know and sympathize with every part of the community; and ought therefore to be taken not only from different parts of the whole Republic, but also from different districts of the larger members of it, which had in several instances, particularly in Virginia, different interests and views arising from difference of produce, or habits, and so forth. He admitted that we had been too democratic but was afraid we should incautiously run into the opposite extreme. We ought to attend to the rights of every class of people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity and policy; considering that however affluent their circumstances, or elevated their situations might be, the course of a few years, not only might but certainly would, distribute their posterity throughout the lowest classes of society. Every selfish motive therefore, every family attchment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest than of the highest order of citizens.

Mr. Wilson contended strenuously for drawing the most numerous branch of the legislature immediately from the people.

He was for raising the Federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican government this confidence was peculiarly essential. He also thought it wrong to increase the weight of the State legislatures by making them the electors of the National Legislature. All interference between the general and local government should be obviated as much as possible. On examination it would be found that the opposition of States to Federal measures had proceeded much more from the officers of the States, than from the people at large.

Mr. Madison considered the popular election of one branch of the National Legislature as essential to every plan of free government. He observed that in some of the States one branch of the legislature was composed of men already removed from the people by an intervening body of electors. That if the first branch of the general legislature should be elected by the State legislatures, the second branch elected by the first—the executive by the second together with the first, and other appointments again made for subordinate purposes by the executive, the people would be lost sight of altogether; and the necessary sympathy between them and their rulers and officers, too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but thought it might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the Legislature, and in the executive and judiciary branches of the Government. He thought too that the great fabric to be raised would be more stable and durable if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the legislatures.

Mr. Gerry did not like the election by the people. The maxims taken from the British Constitution were often fallacious when applied to our situation which was extremely different. Experience he said had shown that the State legislatures drawn immediately from the people did not always possess their confidence. He had no objection, however, to an election by the people if it were so qualified that men of honor and character might not be unwilling to be joined in the appointments. He seemed to think the people might nominate a certain number out of which the State legislatures should be bound to choose.

Mr. Butler thought an election by the people an impracticable mode.

On the question for an election of the first branch of the National Legislature by the people. (Massachusetts, aye; Connecticut, divided; New York, aye; New Jersey, no; Pennsylvania, aye; Delaware, divided; Virginia, aye; North Carolina, aye; South Carolina, no; Georgia, aye. ("Formation of the United States," p. 125.))

In the final report on Mr. Randolph's plan the Committee of the Whole merely said:

3. *Resolved,* That the Members of the first branch of the National Legislature ought to be elected by the people of the several States for the term of 3 years ("U.S. Formation of the Union," p. 201).

And nothing about voting qualifications, leaving this for specific provision in the States.

On Monday, August 6, the Committee of Detail reported finally the following provision:

ART. IV, SEC. 1. The Members of the House of Representatives shall be chosen every second year by the people of the several States comprehended within the Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States of the most numerous branch of their own legislature ("U.S. Formation of the Union," p. 472).

It is particularly interesting to turn to the reports the work of the Committee of Detail to see through what stages article IV, section 1—which is article I, section 2, of our Constitution today—progressed. The very regulations being proposed at this time in this body were suggested in 1787 at the Constitutional Convention and rejected at that time. On June 19 one draft was set forth. It provided:

That the Members of the second branch of the Legislature of the United States ought to be chosen by the individual legislatures—to be of the age of 30 years at least; to hold their offices for the term of 6 years, one-third to go out biennially; to receive a compensation for the devotion of their time to the public service; to be ineligible to and incapable of holding any office under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term for which they are elected, and for 1 year thereafter (II Farrand, "Records of Federal Conventions," pp. 129 and 130).

The next step was as follows:

The qualification of electors shall be the same (throughout the States, viz) with that in the particular States unless the legislature shall hereafter direct some uniform qualification to prevail through the States (II Farrand, "Records of Federal Convention," p. 139).

(Citizenship; manhood; sanity of mind; previous residents for 1 year, or possession of real property within the State for the whole of 1 year, or enrollment in the militia for the whole of a year.)

Next:

The Members of the House of Representatives shall be chosen biennially by the people of the United States in the following manner. Every freeman of the age of 21 years—having a freehold estate within the United States—who has—having—resided in the United States for the space of 1 whole year immediately preceding the day of election, and has a freehold estate in at least 50 acres of land (II Farrand, supra, p. 151).

Then:

The Members of the House of Representatives shall be chosen every second year—in the manner following—by the people of the several States comprehended within this Union—the time and place and the manner of holding the elections and the rules. The qualifications of the electors shall be (appointed) prescribed by the legislatures of the several States; but their provisions—which they shall make concerning them shall be subject to the control of—concerning them may at any time be altered and superseded by the Legislature of the United States (II Farrand, supra, p. 153).

Mr. President, that was a proposal which was made at one time, and I am citing all these various proposals to show how the members of that convention finally drifted to the provision of the Constitution which is now in that sacred document. In my mind any Senator who will take the time to read these excerpts, to read the history of the present article of the Constitution which gives to the States the right to prescribe qualifications of voters, will come unequivocally to the conclusion that this was to be done by the States and not by the Congress.

Again, see the next report:

The Members of the House of Representatives shall be chosen every second year, by the people of the several States comprehended within this Union. The qualifications of the electors shall be prescribed by the legislatures of the several States but these provisions concerning them may, at any time, be altered and superseded by the Legislature of the United States—the same from time to time as those of the electors, in the several States, of the most numerous branch of their own legislatures.

Mr. President, that was another proposal.

That proposition was submitted in debate, and I cite it to show the varying views of the members of the Convention and the manner and method proposed by each of them. I cite it merely to show that I do not believe anyone overlooked any argument. In other words, there was free debate on the entire subject, and everyone knew what it was all about. After long debate the present amendment to the Constitution was finally adopted by the Convention, and later ratified by three-fourths of the 13 States.

Every one of these suggestions was thought of long ago. They were discussed and wisely rejected by the framers

of our Constitution, when they finally agreed on the form above set out; that is—

The Members of the House of Representatives shall be chosen every second year by the people of the several States comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures (See Farrand, p. 178, art. IV, sec. 1.)

This point, as all others in the much-debated text, was discussed fully. It is interesting to note what such well-informed and brilliant men as Gouverneur Morris; James Wilson, who was a Justice of the United States; Oliver Ellsworth, who was later Chief Justice of the Supreme Court; Colonel Mason; Benjamin Franklin; John Rutledge, who was also a Chief Justice of the United States; and James Madison, thought of the proposed resolution.

I now quote from "Formation of the Union," pages 487, 488, 489, 490, 491, and 492:

Mr. Gouverneur Morris moved to strike out the last member of the section beginning with the words "qualifications of electors," in order that some other provision might be substituted which would restrain the right of suffrage to freeholders.

Mr. Fitzimmons seconded the motion.

Mr. Williamson was opposed to it.

Mr. Wilson: "This part of the report was well considered by the committee, and he did not think it could be changed for the better. It was difficult to form any uniform rule of qualifications for all the States. Unnecessary innovations he thought too should be avoided. It would be very hard and disagreeable for the same persons at the same time, to vote for representatives in the State legislature and to be excluded from a vote for those in the National Legislature."

Mr. Gouverneur Morris: "Such a hardship would be neither great nor novel. The people are accustomed to it and not dissatisfied with it, in several of the States. In some the qualifications are different for the choice of the Governor and the Representatives; in others for different houses of the legislature. Another objection against the clause as it stands is that it makes the qualifications of the National Legislature depend on the will of the States, which he thought not proper."

Mr. Ellsworth thought the qualifications of the electors stood on the most proper footing. The right of suffrage was a tender point, and strongly guarded by most of the State constitutions. The people will not readily subscribe to the National Constitution if it should subject them to be disfranchised. The States are the best judges of the circumstances and temper of their own people.

Colonel Mason: "The force of habit is certainly not attended to by those gentlemen who wish for innovations on this point. Eight or nine States have extended the right of suffrage beyond the freeholders, what will the people there say, if they should be disfranchised? A power to alter the qualifications would be a dangerous power in the hands of the Legislature."

Mr. Butler: "There is no right of which the people are more jealous than that of suffrage. Abridgments of it tend to the same revolution as in Holland where they have at length thrown all power into the hands of the senates, who fill up vacancies themselves, and form a rank aristocracy."

Mr. Dickinson had a very different idea of the tendency of vesting the right of suffrage in the freeholders of the country. He considered them as the best guardians of liberty; and the restriction of the right to them as a necessary defense against the dangerous influence of those multitudes without property and without unpopularity of the innovation it was in his opinion chimerical. The great mass of our citizens is composed at the time of freeholders, and will be pleased with it.

Mr. Ellsworth: "How shall the freehold be defined? Ought not every man who pays a tax to vote for the representative who is to levy and dispose of his money? Shall the wealthy merchants and manufacturers, who will bear the full share of the public burdens be not allowed a voice in the imposition of them—taxation and representation ought to go together."

Mr. Gouverneur Morris had long learned not to be the dupe of words. The sound of aristocracy therefore had no effect upon him. It was the thing, not the name, to which he was opposed, and one of his principal objections to the Constitution as it is now before us, is that it threatens the country with an aristocracy. The aristocracy will grow out of the House of Representatives. Give the votes to people who have no property, and they will sell them to the rich who will be able to buy them. We should not confine our attention to the present moment. The time is not distant when this country will abound with mechanics and manufacturers who will receive their bread from their employers. Will such men be the secure and faithful guardians of liberty? Will they be the impregnable barrier against aristocracy? He was as little duped by the association of the words "taxation" and "representation." The man who does not give his vote freely is not represented. It is the man who dictates the vote. Children do not vote. Why? Because they want prudence, because they have no will of their own. The ignorant and the dependent can be as little trusted with the public interest. He did not conceive the difficulty of defining freeholders to be insuperable. Still less that the restriction could be unpopular. Nine-tenths of the people are at present freeholders and these will certainly be pleased with it. As to merchants, etc., if they have wealth and value the right they can acquire it. If not, they don't deserve it.

Colonel Mason: "We all feel too strongly the remains of ancient prejudices, and view things too much through a British medium. A freehold is the qualification in England, and hence it is imagined to be the only proper one. The true idea in his opinion was that every man having evidence of attachment to and permanent common interest with the society ought to share in all its rights and privileges. Was this qualification restrained to freeholders? Does no other kind of property but land evidence a common interest in the proprietor? Does nothing besides property mark a permanent attachment. Ought the merchant, the moneyed man, the parent of a number of children whose fortunes are to be pursued in his own country, to be viewed as suspicious characters, and unworthy to be trusted with the common rights of their fellow citizens."

Mr. Madison: "The right to suffrage is certainly one of the fundamental articles of republican government, and ought not to be left to be regulated by the legislature."

When he spoke of the legislature, he meant Congress, of course.

"A gradual abridgment of this right has been the mode in which aristocracies have been built on the ruins of popular forms. Whether the constitutional qualification ought to be a freehold, would with him depend much on the probable reception such a change would meet with in the States where the right was now exercised by every description of people. In several of the States a freehold was now the qualification. Viewing the subject in its merits alone, the freeholders of the country would be the safest depositories of republican liberty. In future times a great majority of the people will not only be without land, but any other sort of property. These will either combine under the influence of their common situation; in which case, the rights of property and the public liberty, will not be secure in their hands; or what is more probable, they will become the tools of opulence and ambition, in which case there will be equal danger on another side.

"The example of England had been misconceived (by Colonel Mason). A very small proportion of the representatives are there chosen by freeholders. The greatest part are chosen by the cities and boroughs, in many of which the qualification of suffrage is as low as it is in any one of the United States, and it is in the boroughs and cities rather than the counties that bribery most prevailed, and the influence of the Crown on elections was most dangerously exerted."

Dr. Franklin: "It is of great consequence that we should not depress the virtue and public spirit of our common people, of which they displayed a great deal during the war, and which contributed principally to the favorable issue of it."

He related the honorable refusal of the American seamen who were carried in great numbers into the British prisons during the war, to redeem themselves from misery or to seek their fortunes, by entering on board the ships of the enemies to their country, contrasting their patriotism with a contemporary instance in which the British seamen made prisoners by the Americans, readily entered on the ships of the latter on being promised a share of the prizes that might be made out of their own country.

This proceeded, he said, from the different manner in which the common people were treated in America and Great Britain. He did not think that the elected had any right in any case to narrow the privileges of the electors. He quoted as arbitrary the British statute setting forth the danger of tumultuous meetings, and under that pretext narrowing the right of suffrage to persons having freeholds of a certain value; observing that this statute was soon followed by another under the succeeding Parliament, subject the people who had no votes to peculiar labors and hardships. He was persuaded also that such a restriction as was proposed would give great uneasiness in the populous States. The sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description.

Mr. Mercer: "The Constitution is objectionable in many points, but in none more than the present."

He objected to the footing on which the qualification was put, but particularly to the mode of election by the people.

The people cannot know and judge the characters of candidates. The worst possible choice will be made. He quoted the case of the senate in Virginia as an example in point. The people in towns can unite their votes in favor of one favorite, and by that means always prevail over the people of the country, who being dispersed, will scatter their votes among a variety of candidates.

Mr. Rutledge thought the idea of restraining the right of suffrage to the freeholders a very unadvised one. It would create division among the people and make enemies of all those who should be excluded.

On the question for striking out as moved by Mr. Gouverneur Morris, from the word qualifications to the end of the article III:

New Hampshire, no; Massachusetts, no; Connecticutt, no; Pennsylvania, no; Delaware, aye; Maryland, divided; Virginia, no; North Carolina, no; South Carolina, no; Georgia, not present.

WEDNESDAY, AUGUST 8, IN CONVENTION

Article IV. Section 1 being under consideration—Mr. Mercer expressed his dislike of the whole plan, and his opinion that it never could succeed.

Mr. Ghorum: He had never seen any inconvenience from allowing such as were not freeholders to vote, though it had long been tried. The elections in Philadelphia, New York, and Boston where merchants and mechanics vote are at least as good as those made by freeholders only. The case in England was not accurately stated yesterday (by Mr. Madison). The cities and large towns are not the seat of Crown influence and corruption. These prevail in the boroughs, and not on account of the right which those who are not freeholders have to vote, but of the smallness of the number who vote. The people have been long accustomed to this right in various parts of America, and will never allow it to be abridged. We must consult their rooted prejudices if we expect their concurrence in our propositions.

Mr. Mercer did not object so much to an election by the people at large including such as were not freeholders, as to their being left to make their choice without any guidance. He hinted that candidates ought to be nominated by the State legislatures.

On the question of agreeing to article IV, section 1, it passed nem con. (Quoted from "U.S. Formation of the Union," p. 487.)

How timely this discussion is today. How true and to the point. I have no need to search for reasons or to manufacture a logician's arguments. I need only take the very words of men whom history has stamped with greatness and foresight to prove my position.

I repeat some of these well-considered words, in fact, I delight to dwell upon their wisdom:

The right of suffrage was a tender point, and strongly guarded by most of the State constitutions.

The States are the best judges of the circumstances and temper of their own people.

A power to alter the qualifications would be a dangerous power in the hands of the legislature (referring to the National Legislature—Congress).

Particularly note what Benjamin Franklin, noted for his practical, earthy, common sense, said:

He did not think that the elected had any right in any case to narrow the privileges of the electors.

Turning now from the remarkable document of James Madison, recording the activities of the Constitutional Convention, to the notes of Rufus King, a delegate from Massachusetts to the Constitutional Convention, corroborating the Madison papers, here is King's record of the debate over the clause, "electors to be the same as those of the most numerous branch of the State legislature":

Morris proposed to strike out the clause and to leave it to the State legislatures to establish the qualification of the electors and elected, or to add a clause giving to the national legislature powers to alter the qualifications.

Ellsworth: "If the legislature can alter the qualifications, they may disqualify three-fourths, or a greater portion of the electors—this would go far to create aristocracy. The clause is safe as it stands—the States have staked their liberties on the qualifications which we have proposed to confirm."

Dickinson: "It is urged that to confine the right of suffrage to the freeholders is a step toward the creation of an aristocracy. This cannot be true. We are all safe by trusting the owners of the soil; and it will not be unpopular to do so, for the freeholders are the more numerous class. Not from freeholders, but from those who are not freeholders, free governments have been endangered. Freeholds are by our laws of inheritance divided among the children of the deceased, and will be parceled out among all the worthy men of the State; the merchants and mechanics may become freeholders; and without being so, they are electors of the State legislatures, who appoint the Senators of the United States."

Ellsworth: "Why confine the right of suffrage to freeholders? The rule should be that he who pays and is governed, should be an elector. Virtue and talents are not confined to the freeholders, and we ought not to exclude them."

Morris: "I disregard sounds and am not alarmed with the word 'aristocracy,' but I dread the thing and will oppose it, and for this reason I think that I shall oppose this Constitution because it will establish an aristocracy. There cannot be an aristocracy of freeholders if they are all electors. But there will be, when a great and rich man can bring his poor dependents to vote in our elections—unless you establish a qualification of property, we shall have an aristocracy. Limit the right of suffrage to freeholders, and it will not be unpopular, because nine-tenths of the inhabitants are freeholders."

Mason: "Everyone who is of full age and can give evidence of his common interest in the community should be an elector. By this rule, freeholders alone have not his common interest. The father of a family, who has no freehold, has this interest. When he is dead his children will remain. This is a natural interest or bond which binds men to their country—lands are but an artificial tie. The idea of counting freeholders as the true and only persons to whom the right of suffrage should be confided is an English prejudice. In England, a Twig and Turf are the electors."

Madison: "I am in favor of entrusting the right of suffrage to freeholders only. It is a mistake that we are governed by English attachments. The Knights of the Shires are chosen by freeholders, but the members of the cities and boroughs are elected by freemen without freeholds, and who have as small property as the electors of any other country. Where is the Crown influence seen, where is corruption in the elections practiced? Not in the counties, but in the cities and boroughs."

Franklin: "I am afraid that by depositing the right of suffrage in the freeholders exclusively we shall injure the lower class of freemen. This class possess hardy virtues and great integrity. The Revolutionary War is a glorious testimony in favor of plebeian virtue—our military and naval men are sensible of this truth. I myself know that our seamen who were prisoners in England refused all the allurements that were made use of to draw them from their allegiance to their country—threatened with ignominious halters, they still refused.

"This was not the case with the English seamen, who on being made prisoners entered into the American service and pointed out where other prisoners could be made—and this arose from a plain cause. The Americans were all free and equal to any of their fellow citizens—the English seamen were not so. In ancient times every freeman was an elector, but afterward England made a law which required that every elector should be a freeholder. This law related to the county elections. The consequence was that the residue of the inhabitants felt themselves disgraced, and in the next Parliament a law was made authorizing the justice of the peace to fix the price of labor and to compel persons who were not freeholders to labor for those who were, at a stated rate, or to be put in prison as idle vagabonds. From this period the common people of England lost a great portion of attachment to their country."

WEDNESDAY, AUGUST 8. QUALIFICATIONS OF ELECTORS OF REPRESENTATIVES

Gorham: "The qualifications (being such as the several States prescribe for electors of their most numerous branch of the legislature) stand well.

"Gentlemen are in error who suppose the electors of cities may not be trusted. In England the members chosen in London, Bristol, and Liverpool are as independent as the members of the counties of England. The Crown has little or no influence in city election, but has great influence in boroughs, where the votes of freeholders are bought and sold. There is no risk in allowing the merchants and mechanics to be electors; they have been so, time immemorial, in this country and in England. We must not disregard the habits, usages and prejudices of the people" (pp. 873, 874, 875, to top p. 876).

Mr. President, that debate, with the resulting provisions duly considered, was again recorded by Dr. James McHenry, delegate from Maryland. See "U.S. Formation of the Union," pages 934 and 935.

When all the views were aired, and the pros and cons of leaving the qualifications of voters for the National Legislature to be decided by the several States had been debated, the considered result was article I, section 2, of the Constitution of the United States, adopted September 17, 1787:

The House of Representatives shall be composed of Members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

Every word of that provision had been torn apart in open discussion, until there can be no possible doubt that it was the intention of the framers of the Constitution to leave to State control the field of voting qualifications.

In submitting the Constitution, Dr. Samuel Johnson, the delegate from Connecticut, added to it the following letter:

The friends of our country have long seen and desired that the power of making war, peace, and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities should be fully and effectually vested in the General Government of the Union; but the impropriety of delegating such extensive trust to one body of men is evident—thence results the necessity of a different organization.

It is obviously impracticable in the Federal Government of these States to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject we kept steadily in our view that which appeared to us the greatest interest of every true American, the consolidation of our

Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the Convention to be less rigid in points of inferior magnitude than might have been otherwise expected, and thus the Constitution, which we now present, is the result of a spirit of amity and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable. That it will meet the full and entire approbation of every State is not perhaps to be expected, but each will doubtless consider that had her interest alone been consulted the consequences might have been particularly disagreeable and injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish (p. 713, "Formation of the United States").

Thus we see that at a time when all rights of independent sovereignty could not be secured to each State, when the interest of each State alone could not be considered, when the greatest interest of every American was the consolidation of the Union, even then, when the line was drawn between the rights which had to be surrendered and those which would be reserved, the right to determine the qualification of voters was reserved to each State.

A comment on this is found in McCulloch, "Suffrage and Its Problems," at page 30:

When the more perfect union was formed under the Constitution of the United States, each State had the right to frame its own laws respecting suffrage. Hence article V was carried over into the new Constitution and became article I, section 2: "The franchise for the election of the Members of the House of Representatives shall in every State be the same as for the 'most numerous branch of the State legislature.'" The Constitution did not disturb the diversities of suffrage regulations existing in the several Commonwealths; it adopted them. For the Constitution to have been anything but silent on the regulations of suffrage would have been an innovation, and, as Viscount Bryce observed, the members of the Constitutional Convention were too sound political scientists to ignore precedents. Only in three amendments (and only directly in the 15th and 19th) has the Constitution trenched on the Commonwealth right to regulate suffrage—and even then under extraordinary circumstances.

These amendments I shall discuss later, when I have fully covered the formative period.

McCulloch, further commenting, says:

While there has been a revolution in the conception of citizenship, there was no such change in the regulation of suffrage, the determining and regulating power continued to rest with the States. However, much as publicists and reformers may desire a uniform national suffrage law, it is unattainable; expediency and constitutionality are both adverse. In fact such a plan was considered by the Constitutional Convention itself, but it received the vote of only one Commonwealth—Delaware. "The provision made by the Convention appears to be the best that lay within their option." The Fathers were satisfied for the States to continue to make their own suffrage tests, rather than to further prolong the Convention and so further endanger the rather slim chances of ratification by the several Commonwealths. The prospect in the Convention itself was anything but promising. Even Franklin moved to call in a parson that they might invoke the assistance of heaven.

The Constitution conferred the franchise on no one. Likewise citizenship does not bestow suffrage, either upon the natural born or the naturalized alien. The several States have the unqualified right to impose qualifications and regulate suffrage subject only to the limitations in the amendments referred to above. In handing down the decision in the case of *Corfield* v. *Coryell*, Judge Washington, in enumerating the privileges and immunities that are usually associated with citizenship, said: "To which is to be added the elective franchise, as regulated and established by the laws or constitutions of the State in which it is exercised" (McCulloch, "Suffrage and Its Problems," p. 32).

Also note what Hart says in his "Formation of the Union," at pages 136–137:

The real boldness of the Constitution is the novelty of the Federal system which it set up.

This was the best of the few elaborately written constitutions ever applied to a federation; and the details were so skillfully arranged that the instrument framed for 13 little agricultural communities works well today for 48 large and populous States. * * * The Convention knew how to select institutions that would stand together; it also knew how to reject what would have weakened the structure.

It was a long time before a compromise between the discordant elements could be reached. To declare the country a centralized Nation would destroy the traditions of a century and a half; to leave it an assemblage of States, each claiming independence and sovereignty, would throw away the results of the Revolution. The convention finally agreed that while the Union should be endowed with adequate powers, the States should retain all power not specifically granted, and particularly the right to regulate their own internal affairs ("Formation of the Union," p. 137).

Mr. President, history records that in 1788 there appeared the first edition of the now famous "The Federalist," a collection of essays written in favor of the new Constitution as agreed upon by the Federal Convention on September 17, 1787.

Mr. President, the authorship of "The Federalist" has been the subject of great research and argument. It is now conceded that a number of the papers were written by Alexander Hamilton, some by Madison, and a few by Jay. I quote from an introduction to the work by Henry Cabot Lodge:

"The Federalist," furthermore, was the first authoritative interpretation of the Constitution, and was mainly written by the two principal authors of that instrument. It was the first exposition of the Constitution and the first step in the long process of development which has given life, meaning, and importance to the clauses agreed upon at Philadelphia. It has acquired all the weight and sanction of a judicial decision, and has been constantly used as an authority in the settlement of constitutional questions ("The Federalist," intro. p. XIiii, 2d par.).

In No. 45, by Madison, in a paper concerned with the question of whether the whole of the mass of Federal power would endanger the State's authority, the author said:

The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State ("The Federalist," p. 290).

Next, let us turn to "The Federalist," No. 52. From the more general inquiries pursued in the four last papers, I pass on to a more particular examination of the several parts of the Government.

I shall begin with the House of Representatives:

The first view to be taken of this part of the Government relates to the qualifications of the electors and the elected.

Those of the former are to be the same with those of the electors of the most numerous branch of the State legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the Convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of the Federal Government which ought to be dependent on the people alone. To have reduced the different qualifications in the different States to one uniform rule, would probably have been as dissatisfactory to some of the States as it would have been difficult to the Convention.

The qualifications of the elected, being less carefully and properly defined by the State constitutions, and being at the same time more susceptible of uniformity, have been very properly considered and regulated by the Convention. A Representative of the United States must be of the age of 25 years; must have been 7 years a citizen of the United States; must, at the time of his election, be an inhabitant of the State he is to represent; and, during the time of his service, must be in no office under the United States. Under these reasonable limitations, the door of this part of the Federal Government is open to merit of every description, whether native or adoptive, whether young or old, and without regard to proverty or wealth, or to any particular profession of religious faith.

That is from "The Federalist," No. 52, pages 327 and 328. The provision in section 4, clause 1, of article I, provides that:

The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.

"Manner" here refers to manner of holding elections, the mechanics thereof. Obviously there is no bearing upon voting qualifications. The Congress treated the person of the elector in article I, section 2, and the form or procedure of the election in article I, section 4. That even this power was only to be exercised only in case of national emergency, or failure of a State to provide for an election is made clear by Hamilton in his

discussion. I quote from "The Federalist," No. LIX:

They have submitted the regulation of elections for the Federal Government, in the first instance, to the local administrations; which, in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.

Nothing can be more evident, than that an exclusive power of regulating elections for the National Government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it, by neglecting to provide for the choice of persons to administer its affairs.

That is from "The Federalist," page 369, line 22.

Even so, this procedural provision caused considerable objection and discussion in the State conventions which clarified its meaning by argument and emphasized its procedural application only, before they adopted the Constitution. I will discuss this fully in my treatment of the adoption of the Constitution by the various States, which I shall begin at this point.

I read from "Formation of the Union," by Hart, pages 140 to 145:

The text of the Constitution was printed and rapidly distributed throughout the Union. It was still but a lifeless draft, and before it could become an instrument of government the approving action of Congress, of the legislatures, and of State conventions was necessary. On September 28, 1787, the Congress unanimously resolved that the Constitution be transmitted to the State legislatures. The Federal Convention was determined that the consideration of its work should not depend, like the Articles of Confederation, upon the slow and unwilling humor of the legislatures; but that in each State a convention should be summoned solely to express the will of the State upon the acceptance of the Constitution. It had further avoided the rock upon which had been wrecked the amendments proposed by Congress by providing that when nine State conventions should have ratified the Constitution, it was to take effect for those nine. On the same day that Congress in New York was passing its resolution, the Pennsylvania Legislature in Philadelphia was fixing the day for the election of delegates; all the State legislatures followed, except in Rhode Island.

The next 6 months was a period of great anxiety and of national danger. The proposed Constitution was violently attacked in every part of the Union: the President, it was urged, would be a despot, the House of Representatives a corporate tryant, the Senate an oligarchy. The large States protested that Delaware and Rhode Island would still neutralize the votes of Virginia and Massachusetts in the Senate.

The Federal courts were said to be an innovation. It was known that there had been great divisions in the Convention, and that several influential members had left, or at the last moment refused to sign. "The people of this Commonwealth," said Patrick Henry, "are exceedingly uneasy in being brought from that state of full security which they enjoyed, to the present delusive appearance of things."

As the State conventions assembled, the excitement grew more intense. Four States alone contained within a few thousand of half the population of the Union: they were Massachusetts, Virginia, New York, and North Carolina. In the convention of each of these States there was opposition strong and stubborn, one of them—North Carolina—adjourned without action; in the other three, ratification was obtained with extreme difficulty and by narrow majorities. The first State to come under the "new roof," as the Constitution was popularly called, was Delaware. In rapid succession followed Pennsylvania, New Jersey, Georgia, and Connecticut.

In Massachusetts, the sixth State, there was a hard fight; the spirit of the Shays Rebellion was still alive; the opposition of Samuel Adams was only overcome by showing him that he was in the minority; John Hancock was put out of the power to interfere by making him the silent president of the Convention. It was suggested that Massachusetts ratify on condition that a long list of amendments be adopted by the new government: The friends of the Constitution pointed out that this plan meant only to ratify a part of the Constitution and to reject the rest; each succeeding State would insist on its own list of amendments, and the whole work must be done over. February 6, 1788, the enthusiastic people of Boston knew that the Convention, by a vote of 187 to 167, had ratified the Constitution; the amendments being added not as a condition, but as a suggestion. Maryland, South Carolina, and New Hampshire brought the number up to nine.

Before the ninth ratification was known, the fight had been won also in Virginia. Among the champions of the Constitution were Madison, Edmund Randolph, and John Marshall.

James Monroe argued against the system of election which was destined twice to make him President. In spite of the determined opposition of Patrick Henry, and in spite of a proposition to ratify with amendments, the convention accepted. New York still held off. Her acquiescence was geographically necessary; and Alexander Hamilton, by the power of his eloquence and his reason, made clear the advantage of the Constitution to a future commercial State and the 11th ratification was obtained.

During the session of the convention in Philadelphia, Congress continued to sit in New York; and the northwest ordinance was passed at this time. Congress voted that the Constitution had been ratified, September 13, 1788; and that elections should proceed for the officers of the new government, which was to go into operation the first Wednesday in March 1789.

What, meantime, was the situation of the two States, Rhode Island and North Carolina, which had not ratified the Constitution, and which were, therefore, not entitled to take part in the elections? They had in 1781 entered into a constitution which was to be amended only by unanimous consent; their consent was refused. Had they not a right to insist on the continuance of the old Congress? The new Constitution, they considered, was flatly unconstitutional; it had been ratified by a process unknown to law. The situation was felt to be delicate, and those States were for the time being left to themselves. North Carolina came into the Union by a ratification of November 21, 1789. It was suggested that the trade of States which did not recognize Congress should be cut off, and Rhode Island yielded. May 19, 1790, her ratification completed the union of the old 13 States.

Keeping this summary in mind, let us consider in detail the proceedings and debates in the various States as they pertain to voting qualifications.

Delaware's ratification was the first one to be reported in general convention. Elliott's accounts of the constitutional debates contain nothing on Delaware's convention.

Pennsylvania was second to ratify the Constitution. In a speech by Mr. Wilson, on October 28, 1787, on behalf of the Constitution, he made the following observation:

The legislative department is subdivided into two branches—the House of Representatives and the Senate. Can there be a House of Representatives in the General Government, after the State governments are annihilated? Care is taken to express the character of the electors in such a manner, that even the popular branch of the General Government, cannot exist unless the governments of the States continue in existence.

How do I prove this? By the regulation that is made concerning the important subject of giving suffrage. Article I, section 2: "And the electors in each State shall have the qualifications for electors of the most numerous branch of the State legislature." Now, sir, in order to know who are qualified to be electors of the House of Representatives, we are to inquire who are qualified to be electors of the legislature of each State.

If there be no legislature in the States, there can be no electors of them: if there be no such electors, there is no criterion to know who are qualified to elect Members of the House of Representatives. By this short, plain deduction, the existence of State legislatures is proved to be essential to the existence of the General Government (Elliott II, "Constitutional Debates," p. 438).

Concerning section 4 of article 1, Mr. Wilson, who was one of the members of the committee of detail, said:

I will read it: "The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators."

And is this a proof that it was intended to carry on this Government after the State governments should be dissolved and abrogated? This clause is not only a proper, but necessary one. I have already shown what pains have been taken in the convention to secure the preservation of the State governments. I hope, sir, that it was no crime to sow the seed of self-preservation in the Federal Government; without this clause, it would not possess self-preserving power. By this clause, the times, places, and manner of holding elections, shall be prescribed in each State, by the legislature thereof. I think it highly proper that the Federal Government should throw the exercise of this power into the hands of the State legislatures; but not that it should be placed there entirely without control.

If the Congress had it not in their power to make regulations, what might be the consequences? Some States might make no regulations at all on the subject. And shall the existence of the House of Representatives, the immediate representation of the people in Congress, depend upon the will and pleasure of the State governments? Another thing may possibly happen; I don't say it will, but we were obliged to guard even against possibilities, as well as probabilities.

A legislature may be willing to make the necessary regulations; yet the minority of that legislature may, by absenting themselves, break up the house, and prevent the execution of the intention of the majority. I have supposed the case, that some State governments may make no regulations at all; it is possible, also, that they may make improper regulations. I have heard it surmised by the opponents of this Constitution, that the Congress may order the election for Pennsylvania to be held at Pittsburgh, and thence conclude that it would be improper for them to have the exercise of power. But suppose, on the other hand, that

the assembly should order an election to be held at Pittsburgh; ought not the General Government to have the power to alter such improper election of one of its own constituent parts? But there is an additional reason still that shows the necessity of this provisionary clause. The Members of the Senate are elected by the State legislatures. If those legislatures possessed, uncontrolled, the power of prescribing the times, place, and manner of electing Members of the House of Representatives, the Members of one branch of the General Legislature would be the tenants at will of the electors of the other branch; and the General Government would lie prostrate at the mercy of the legislatures of the several States.

I will ask now, is the inference fairly drawn that the General Government was intended to swallow up the State governments? Or was it calculated to answer such end? Or do its framers deserve such censure from honorable gentlemen? We find, on examining this paragraph, that it contains nothing more than the maxims of self-preservation, so abundantly secured by this Constitution to the *individual* States. Several other objections have been mentioned. I will not, at this time, enter into a discussion of them, though I may hereafter take notice of such as have any show of weight; but I thought it necessary to offer, at this time, the observations I have made, because I consider this as an important subject, and think the objection would be a strong one if it was well founded (Elliott II, supra, pp. 440–441).

Again:

The power over elections, and of judging of elections, give absolute sovereignty. This power is given to every State legislature; yet I see no necessity that the power of absolute sovereignty should accompany it. My general position is, that the absolute sovereignty never goes from the people (Elliott II, supra, pp. 464–465).

Mr. Wilson leaves no doubt as to the meaning of the Constitution as he reiterates:

Permit me to proceed to what I deem another excellency of this system: All authority, of every kind, is derived by representation from the people, and the democratic principle is carried into every part of the Government. I had an opportunity, when I spoke first, of going fully into an elucidation of this subject. I mean not now to repeat what I then said.

I proceed to another quality that I think estimable in this system: It secures, in the strongest manner, the right of suffrage. Montesquieu, book 2, chapter 2, speaking of laws relative to democracy, says:

"When the body of the people is possessed of the supreme power, this is called a democracy. When the supreme power is lodged in the hands of a part of the people, it is then an aristocracy.

"In a democracy the people are in some respects the sovereign, and in others the subject.

"There can be no exercise of sovereignty but by their suffrages, which are their own will. Now, the sovereign's will is the sovereign himself. The laws, therefore, which establish the right of suffrage, are fundamental to this Government. And, indeed, it is as important to regulate, in a republic, in what manner, by whom, to whom, and concerning what, suffrages are to be given, as it is, in a monarchy, to know who is the prince, and after what manner he ought to govern."

In this system, it is declared that the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. This being made the criterion of the right of suffrage, it is consequently secured, because the same Constitution guarantees to every State in the Union a republican form of government. The right of suffrage is fundamental to the republic (Elliott II, supra, p. 482).

In response to further objections to article I, section 4, Mr. Wilson said:

It is repeated, again and again, by the honorable gentleman, that the power over elections, which is given to the General Government in this system is a danger power. I must own I feel, myself, surprised that an objection of this kind should be persisted in, after what has been said by the honorable colleague in reply.

I think it has appeared, by a minute investigation of the subject, that it would have been not only unwise, but highly improper, in the late Convention, to have omitted this clause, or given less power than it does over elections. Such powers, sir, are enjoyed by every State government in the United States. In some they are of a much greater magnitude; and why should this be the only one deprived of them? Ought not these, as well as every other legislative body, to have the power of judging of the qualifications of its own members? "The times, places, and manner of holding elections for representatives may be altered by Congress." This power, sir, has been shown to be necessary, not only on some particular occasions, but even to the very existence of the Federal Government. I have heard some very improbable suspicions indeed suggested with regard to the manner in which it will be exercised. Let us suppose it may be improperly exercised; is it not more likely so to be by the particular States than by the Government of the United States? Because the General Government will be more studious of the good of the whole than a particular State will be; and therefore, when the power of regulating the time, place, or manner of holding elections, is exercised by the Congress, it will be to correct the improper regulations of a particular State (Elliott II, supra, p. 509).

Mr. McKean enumerated the arguments against the Constitution. No. 4 was that Congress could, by law, deprive the electors of a fair choice of their representatives by fixing improper times, places, and modes of election. He answered that argument as follows:

Every house of representatives are of necessity to be the judges of the elections, returns and qualifications of its own members. It is therefore their province, as well as duty, to see that they are fairly chosen, and are the legal members; for this purpose, it is proper they should have it in their power to provide that the times, places, and manner of election should be such as to insure free and fair elections (Elliott II, supra, p. 535).

Obviously this text had reference to procedure only, and insures against the failure of a State to provide for an election; it had no bearing upon the qualifications of the electors, or voters, which was specifically left to the States in article I, section 2.

However, being zealous in their guard of their rights, a group of citizens of Pennsylvania gathered at a meeting in Harrisburg suggested a number of amendments to be submitted to the new Constitution. Among them was the following provision:

That Congress shall not have power to make or alter regulations concerning the time, place, and manner of electing Senators and Representatives, except in case of neglect or refusal by the State to make regulations for the purpose; and then only for such time as such neglect or refusal shall continue (Elliott II, supra, p. 545, sec. 4).

Pennsylvania ratified the Constitution December 12, 1787; New Jersey, December 18, 1787.

Connecticut was fourth on the list to come under the roof. I have found no argument specifically on the point of State control of voting qualifications, so I shall only note, in passing, the general observation of Governor Huntingdon, of Connecticut:

The State governments, I think, will not be endangered by the powers vested by this Constitution in the General Government. While I have attended in Congress, I have observed that the Members were quite as strenuous advocates for the rights of their respective States, as for those of the Union. I doubt not but that this will continue to be the case; and hence I infer that the General Government will not have the disposition to encroach upon the States.

On September 17, 1782, Connecticut ratified the Constitution—Elliott II, supra, page 199.

The Massachusetts convention entered upon the consideration of the proposed Constitution on January 9, 1788. Here we find an extensive discussion of section 4, of article I:

Mr. Pierce (from Partridgefield), after reading the fourth section, wished to know the opinion of gentlemen on it, as Congress appeared thereby to have a power to regulate the time, place, and manner of holding elections. In respect to the manner, said Mr. Pierce, suppose the legislature of this State should prescribe that the choice of the Federal representatives should be in the same manner as that of Governor—a majority of all the votes in the State being necessary to make it such—and Congress should deem it an improper manner, and should order that it be as practiced in several of the Southern States, where the highest number of votes makes a choice—have they not power by this section to do so? Again, as to the place, continues Mr. Pierce, may not Congress direct, that the election for Massachusetts shall be held in Boston? And if so, it is possible that, previous to the election, a number of the electors may meet, agree upon the eight delegates, and propose the same to a few towns in the vicinity, who agreeing in sentiment, may meet on the day of election, and carry their list by a major vote. He did not, he said, say that this would be the case; but he wished to know if it was not a possible one.

Mr. Bishop rose, and observed that, by the fourth section, Congress would be enabled to control the elections of representatives. It has been said, says he, that this power was given in order that refractory States may be made to do their duty. But if so, sir, why was it not so mentioned? If that was the intention, he asked why the clause did not run thus: "The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof;" but, "if any State shall refuse or neglect so to do, Congress may," etc. This, he said, would admit of no prevarication (Elliott II, supra, p. 22).

He proceeded to observe, that if the States shall refuse to do their duty, then let the power be given to Congress to oblige them to do it.

But if they do their duty, Congress ought not to have the power to control elections. In an uncontrolled representation, says Mr. Bishop, lies the security of freedom; and he thought by these clauses, that that freedom was sported with. In fact, says he, the moment we give Congress this power, the liberties of the yeomanry of this country are

at an end. But he trusted they would never give it; and he felt a consolidation from the reflection.

The fourth section, which provides that the State legislatures shall prescribe the time, place, and manner of holding elections, and that Congress may at any time make or alter them, except in those of Senators, though not in regular order, under deliberation.

The Honorable Mr. Strong followed Mr. Bishop, and pointed out the necessity there is for the fourth section. The power, says he, to regulate the elections of our Federal representatives must be lodged somewhere.

I know of but two bodies wherein it can be lodged—the legislatures of the several States, and the general Congress. If the legislative bodies of the States, who must be supposed to know at what time, and in what place and manner, the elections can best be held, should so appoint them, it cannot be supposed that Congress, by the power granted by this section, will alter them; but if the legislature of a State should refuse to make such regulations, the consequence will be, that the representatives will not be chosen, and the General Government will be dissolved. In such case, can gentlemen say that a power to remedy the evil is not necessary to be lodged somewhere?

Mr. J. C. Jones said, it was not right to argue the possibility of the abuse of any measure against its adoption. The power granted to Congress by the fourth section, says he, is a necessary power; it will provide against negligence and dangerous designs. The Senators and Representatives of this State, Mr. President, are now chosen by a small number of electors; and it is likely we shall grow equally negligent of our Federal elections; or, sir, a State may refuse to send to Congress its representatives, as Rhode Island has done. Thus we see its necessity.

To say that the power may be abused, is saying what will apply to all power. The Federal representatives will represent the people; they will be the people; and it is not probable they will abuse themselves. Mr. Jones concluded with repeating, that the arguments against this power could be urged against any power whatever.

Reverend Mr. West: "I rise to express my astonishment at the arguments of some gentlemen against this section. They have only stated possible objections. I wish the gentlemen would show us that what they so much deprecate is probable. Is it probable that we shall choose men to ruin us? Are we to object to all governments? And because power may be abused, shall we be reduced to anarchy and a state of nature? What hinders our State legislatures from abusing their powers? They may violate the Constitution; they may levy taxes oppressive and intolerable, to the amount of all our property. An argument which proves too much, it is said, proves nothing. Some say Congress may remove the place of elections to the State of South Carolina. This is inconsistent with the words of the Constitution, which says, 'that the elections, in each State, shall be prescribed by the legislature thereof,' and so forth, and that representation be apportioned according to numbers; it will frustrate the end of the Constitution, and is a reflection on the gentlemen who formed it. Can we, sir, suppose them so wicked, so vile, as to recommend an article so dangerous?" (Elliott II, supra, p. 23.)

The debate continued at length, while men sought to construe and interpret, to assure themselves that the State control of its elections was not superseded. The Honorable Mr. King, in the course of his speech, said:

The idea of the honorable gentlemen from Douglass, said he, transcends my understanding; for the power of control given by this section extends to the manner of election, not to qualifications of the electors (Elliott II, supra, p. 51).

The temper of the Convention was well illustrated by the words of Mr. Adams, speaking to the Chair, John Hancock presiding, of the Convention.

Another of your excellency's propositions is calculated to quiet the apprehensions of gentlemen lest Congress should exercise an unreasonable control over the State legislatures, with regard to the time, place, and manner of holding elections, which, by the fourth section of the first article, are to be prescribed in each State by the legislature thereof, subject to the control of Congress. I have had my fears lest this control should infringe the freedom of elections, which ought ever to be held sacred. Gentlemen who have objected to this controlling power in Congress have expressed their wishes that it had been restricted to such States as may neglect or refuse that power vested in them; and to be exercised by them if they please. Your excellency proposes, in substance, the same restriction, which I should think, cannot but meet with their full approbation (Elliott II, supra, pp. 131 and 132).

Mr. Mason was still worried over the possibilities of section 4. Said he:

We now come, sir, to the fourth section. Let us see: The time, place, and manner of holding elections, shall be prescribed in each State by the legislature thereof. No objections to this: but, sir, after the flash of lightning comes the peal of thunder. "But Congress may at any time alter them," etc. Here it is, Mr. President, this is the article which is to make Congress omnipotent. Gentlemen say, this is the greatest beauty of the Constitution; this is the greatest security for the people; this is the all in all. Such language have I heard in this house; but, sir, I say, by this power Congress may, if they please, order the election of Federal Representatives for Massachusetts to be at Great Barrington or Machias; and at such a time, too, as shall put it in the power of a few artful and designing men to get themselves elected at their pleasure" (Elliott II, supra, pp. 135 and 136).

On February 7, 1788, Massachusetts ratified the Constitution, and added to its report these words:

And, as it is the opinion of this convention, that certain amendments and alterations in the said Constitution would remove the fears and quiet the apprehensions of many of the good people of the commonwealth, and more effectually guard against an undue administration of the Federal Government, the convention do therefore recommend that the following alterations and provisions be introduced into the said Constitution. Thirdly, that Congress do not exercise the powers vested in them by the fourth section of the first article, but in cases where a State shall neglect or refuse to make the regulations therein mentioned, or shall make regulations therein mentioned, or shall make regulations subversive of the rights of the people to a free and equal representation in Congress, agreeable to the Constitution (see Elliott II, supra, p. 177).

With the qualifications of voters definitely to be regulated by the States under the Constitution, still the people of Massachusetts were so concerned with the possible abuse of the power of Congress over the "time, place, manner," or procedure of an election that they wished it clearly understood that Congress should assume the exercise of such power only in case of extreme necessity, where neglect of duty by a State compelled it.

As pointed out on several occasions, the part of the Constitution dealing with the times, places, and manner of holding elections, and so forth, dealt only with the mechanics of an election, not with the qualification of voters. That was reserved to the States, as I have been trying to demonstrate. The States themselves, in ratifying the Federal Constitution, saw to it that the right to spell out the qualifications of their electors should be a prerogative of the State, and was not to be exercised by the Congress under any condition.

No. 6 to ratify the Constitution was Georgia on January 2, 1788.

No. 7 was Maryland. Among the amendments proposed to be suggested by the States was the following:

2. That the Congress shall have no power to alter or change the time, place, or manner of holding elections for Senators or Representatives, unless a State shall neglect to make regulations, or to execute its regulations, or shall be prevented by invasion or rebellion, in which cases only, Congress may interfere, until the cause be removed (see Elliott II, supra, p. 552).

However, so many amendments were suggested that, through fear of obtaining no security at all for the people, the Constitution was ratified.

In speaking to the Maryland House of Delegates, Mr. James McHenry, referring to the section in the Constitution providing that the qualifications of electors be the same as those of electors for the State legislature, said:

To this section it was objected that if the qualifications of the electors were the same as in the State governments, it would involve in the Federal system all the disorders of a democracy; and it was therefore contended, that none but freeholders, permanently interested in the Government, ought to have a right of suffrage. The venerable Franklin opposed to this the natural rights of man—their rights to an immediate voice in the general assemblage of the whole Nation, or to a right of suffrage and representation, and he instanced from general history and particular events the indifference of those, to the prosperity and welfare of the States who were deprived of it. (Quote III Farrand, Records of the Federal Convention, p. 146.)

Also concerning section 4, he said:

It was thought expedient to vest the Congress with the powers contained in this section, which particular exigencies might require them to exercise, and which the immediate representatives of the people can never be supposed capable of wantonly abusing to the prejudice of their constituents—convention had in contemplation the possible events of insurrection, invasion, and even to provide against any disposition that might occur hereafter in any particular State to thwart the measures of the General Government (Farranc III, supra, p. 148).

On May 23, 1788, Maryland ratified the Constitution.

South Carolina met in convention to consider the Constitution, on May 12, 1788. Speaking of the much-debated fourth section of article I, giving Congress supervisory power over the time, place, and manner of elections, Mr. Pinckney, who was also one of the delegates to the Federal Convention, and in excellent position to know the intention of that body, said:

But if any State should attempt to fix a very inconvenient time for the election, and

name (agreeably to the ideas of the honorable gentlemen) only one place in the State, or even one place in one of the five election districts, for the freeholders to assemble to vote, and the people should dislike this arrangement, they can petition the General Government to redress this inconvenience, and to fix times and places of election of representatives in the State in a more convenient manner; for, as this House has a right to fix the times and places of election, in each parish and county, for the members of the house of representatives of this State, so the General Government has a similar right to fix the times and places of election in each State for the Members of the General House of Representatives. Nor is there any real danger to be apprehended from the exercise of this power, as it cannot be supposed that any State will consent to fix the election at inconvenient seasons and places in any other State, lest she herself should hereafter experience the same inconvenience; but it is absolutely necessary that Congress should have this superintending power, lest, by the intrigues of a ruling faction in a State, the Members of the House of Representatives should not really represent the people of the State, and lest the same faction, through partial State views, should altogether refuse to send representatives of the people to the General Government (IV Elliott, supra, p. 303).

When South Carolina ratified the Constitution, May 23, 1788, they added this observation, or recommendation, to the ratification:

And whereas it is essential to the preservation of the rights reserved to the several States, and the freedom of the people, under the operations of a general government, that the right of prescribing the manner, time, and places, of holding the elections to the Federal Legislature should be forever inseparably annexed to the sovereignty of the several States, this convention doth declare that the same ought to remain to all posterity, a perpetual and fundamental right in the local, exclusive of the interference of the General Government, except in cases where the legislatures of the States shall refuse or neglect to perform and fulfill the same, according to the tenor of the said Constitution (I Elliott, supra, p. 323).

New Hampshire acted ninth of all the States, and we find no discussion there of the sections involving voting qualifications. However, we do find New Hampshire, equally watchful, recommending the following amendment, among others, to the Constitution:

III. That Congress do not exercise the powers vested in them by the fourth section of the first article, but in cases when a State shall neglect or refuse to make the regulations therein mentioned (Elliott I, supra, p. 326).

On September 17, 1787, Virginia ratified the Constitution. The Virginia Convention was lengthy, the debates heated and protracted. Article I, section 2, providing that the electors of the delegates to the House of Representatives shall have the qualifications for electors of the more numerous branch of the State legislature, was read. Mr. George Nicholas spoke as follows—Elliott III, supra, pages 8, 9, 10:

Secondly, as it respects the qualifications of the elected. It has ever been considered a great security to liberty that very few should be excluded from the right of being chosen to the legislature. This Constitution has amply attended to this idea. We find no qualifications required, except those of age and residence, which create a certainty of their judgment being matured, and of being attached to their State. It has been objected that they ought to be possessed of landed estates; but, sir, when we reflect that most of the electors are landed men, we must suppose they will fix on those who are in a similar situation with themselves. We find there is a decided majority attached to the landed interest; consequently, the landed interest must prevail in the choice. Should the State be divided into districts, in no one can the mercantile interest by any means have an equal weight in the elections; therefore, the former will be more fully represented in the Congress; and men of eminent abilities are not excluded for the want of landed property. There is another objection which has been echoed from one end of the continent to the other—that Congress may alter the time, place, and manner of holding elections; that they may direct the place of elections to be where it will be impossible for those who have a right to vote to attend; for instance, that they may order the freeholders of Albemarle to vote in the county of Princess Anne, or vice versa; or regulate elections, otherwise, in such a manner as totally to defeat their purpose, and lay them entirely under the influence of Congress.

I flatter myself that, from an attentive consideration of this power, it will clearly appear that it was essentially necessary to give it to Congress as, without it, there could have been no security for the General Government against the State legislatures. What, Mr. Chairman, is the danger apprehended in this case? If I understand it right, it must be that Congress might cause the elections to be held in the most inconvenient places, and at so inconvenient a time, and in such a manner as to give them the most undue influence over the choice, nay, even to prevent the elections from being held at all—in order to perpetuate themselves. But what would be the consequence of this measure? It would be this, sir, that Congress would cease to exist; it would destroy the Congress itself; it would absolutely be an act of suicide; and, therefore, it can never be expected. This alteration, so much apprehended, must be made by law; that is, with the concurrence of both branches of the legislature.

Will the House of Representatives, the Members of which are chosen only for 2 years, and who depend on the people for their reelection, agree to such an alteration? It is unreasonable to suppose it.

But let us admit, for a moment, that they will: What would be the consequence of passing such a law? It would be, sir, that after the expiration of the 2 years, at the next election they would either choose such men as would alter the law, or they would resist the Government. An enlightened people will never suffer what was established for their security to be perverted to an act of tyranny. It may be said, perhaps, that resistance would then become vain; Congress is vested with the power of raising an army; to which I say, that if ever Congress shall have an army sufficient for their purpose, and disposed to execute their unlawful commands, before they would act under this disguise, they would pull off the mask, and declare themselves absolute. I ask, Mr. Chairman, is it a novelty in our Government? Has not our State legislature the power of fixing the time, places, and manner of holding elections? The possible abuse here complained of never can happen as long as the people of the United States are virtuous. As long as they continue to have sentiments of freedom and independence, should the Congress be wicked enough to harbor so absurd an idea as this objection supposes, the people will defeat their attempt by choosing other representatives, who will alter the law. If the State legislature, by accident, design, or any other cause, would not appoint a place for holding elections, then there might be no election till the time was past for which they were to have been chosen; and as this would eventually put an end to the Union, it ought to be guarded against; and it could only be guarded against by giving this discretionary power to the Congress, of altering the time, place, and manner of holding the elections.

It is absurd to think that Congress will exert this power, or change the time, place, and manner established by the States, if the States will regulate them properly, or so as not to defeat the purposes of the Union. It is urged that the State legislature ought to be fully and exclusively possessed of this power. Were this the case, it might certainly defeat the Government. As the powers vested by this plan on Congress are taken from the State legislatures, they would be prompted to throw every obstacle in the way of the General Government. It was then necessary that Congress should have this power.

I read from Elliott III, pages 8, 9, and 10:

Another strong argument for the necessity of this power is, that, if it was left solely to the States, there might have been as many times of choosing as there are States. States having solely the power of altering or establishing the time of election, it might happen that there should be no Congress.

Not only by omitting to fix a time, but also by the elections in the States being at 13 different times, such intervals might elapse between the first and last election, as to prevent there being a sufficient number to form a house; and this might happen at a time when the most urgent business rendered their session necessary; and by this power, this great part of the representation will be always kept full, which will be a security for a due attention to the interest of the community; and also the power of Congress to make the times of elections uniform in all the States, will destroy the continuance of any cabal, as the whole body of representatives will go out of office at once.

Governor Randolph, although he would not sign the Constitution at the time it was designed, defended it in an impassioned address.

Mr. Henry was equally impassioned in his plea to turn down the Constitution. Note what he says of section 4, article I, as outlined in Elliott III, page 60, as follows:

What can be more defective than the clause concerning the elections? The control given to Congress over the time, place, and manner of holding elections will totally destroy the end of suffrage. The elections may be held at one place, and the most inconvenient in the State; or they may be at remote distances from those who have a right of suffrage; hence 9 out of 10 must either not vote at all, or vote for strangers; for the most influential characters will be applied to, to know who are the most proper to be chosen. I repeat, that the control of Congress over the manner, etc., of electing, well warrants this idea. The natural consequence will be that this democratic branch will possess none of the public confidence; the people will be prejudiced against representatives chosen in such an injudicious manner.

Mr. Corbin, answering Mr. Henry, in part, said:

Do the people wish land only to be represented? They have their wish: for the qualifications which the laws of the States require to entitle a man to vote for a State representative are the qualifications required by this plan to vote for a Representative of Congress; and in this State, and most of the

others, the possession of a freehold is necessary to entitle a man to the privilege of a vote.

This is from Elliott III, pages 110 and 111.

Governor Randolph, also answering Mr. Henry, said:

The State will be laid off and divided into 10 districts: from each of these a man is to be elected. He must be really the choice of the people, not the man who can distribute the most gold; for the riches of Croesus would not avail. The qualifications of the electors being the same as those of the representatives for the State legislatures, and the election being under the control of the legislature, the prohibitory provisions against undue means of procuring votes to the State representation extend to the Federal representatives; the extension of the sphere of election to so considerable a district will render it impossible for contracted influence, or local intrigues, or personal interest, to procure an election. Inquiries will be made, by the voters, into the characters of the condidates. Greater talents, and a more extensive reputation, will be necessary to procure an election for the Federal than for the State representation. The Federal representatives must therefore be well known for their integrity, and their knowledge of the country they represent. We shall have 10 men thus elected. What are they going yonder for? Not to consult for Virginia alone, but for the interest of the United States collectively. Will not such men derive sufficient information from their own knowledge of their respective States, and from the codes of the different States?

Elliott III, pages 125, line 24, to line 5, page 126.

Mr. Henry retorted at length and resorted to bitter vituperative remarks. He said:

I shall make a few observations to prove that the power over elections, which is given to Congress, is contrived by the Federal Government, that the people may be deprived of their proper influence in the Government, by destroying the force and effect of their suffrages. Congress is to have a discretionary control over the time, place, and manner of elections. The Representatives are to be elected, consequently, when and where they please. As to the time and place, gentlemen have attempted to obviate the objection by saying, that the time is to happen once in 2 years, and that the place is to be within a particular district, or in the respective counties. But how will they obviate the danger of referring the manner of election to Congress. Those illumined genii may see that this may not endanger the rights of the people, but in my unenlightened understanding, it appears plain and clear that it will impair the popular weight in the Government.

Look at the Roman history. They had two ways of voting—the one by tribes, and the other by centuries of wealth. By the former, numbers prevailed; in the latter, riches preponderated. According to the mode prescribed, Congress may tell you that they have a right to make the vote of one gentleman go as far as the votes of 100 poor men. The power over the manner admits of the most dangerous latitude. They may modify it as they please. They may regulate the number of votes by the quantity of property, without involving any repugnancy to the Constitution. I should not have thought of this trick or contrivance, had I not seen how the public liberty of Rome was trifled with by the mode of voting by centuries of wealth, whereby one rich man had as many votes as a multitude of poor men. The plebians were trampled on till they resisted. The patricians trampled on the liberties of the plebians till the latter had the spirit to assert their right to freedom and equality. The result of the American mode of election may be similar.

Perhaps I may be told that I have gone through the regions of fancy—that I deal in noisy exclamation and mighty professions of patriotism. Gentleman may retain their opinions; but I look on that paper as the most fatal plan that could possibly be conceived to enslave a free people. If such be your rage for novelty, take it, and welcome; but you never shall have my consent. My sentiments may appear extravagant, but I can tell you that a number of my fellow citizens have kindred sentiments and I am anxious, if my country should come into the hands of tyranny, to exculpate myself from being in any degree the cause, and to exert my faculties to the utmost to extricate her. Whether I am gratified or not in my beloved form of government, I consider that the more she has plunged into distress, the more it is my duty to relieve her. Whatever may be the result, I shall wait with patience till the day may come when an opportunity shall offer to exert myself in her cause (Elliott III, pp. 175 and 176).

Mr. President, the legislation we have before us today only vindicates what at that time were seemingly wild and hysterical apprehensions on the part of Mr. Henry. As I have pointed out earlier in the debate on this so-called right-to-vote bill, it seeks to inject the long arm of the Federal Government into the conduct of State elections. It seeks not only to empower the Federal Government to bypass, override, and overrule State election regulations in the guise of protecting the right of U.S. citizens to vote, but as has been brought to the Senate's attention by my distinguished colleague and friend, the senior Senator from Virginia [Mr. BYRD], there is a real possibility that the Supreme Court may hold, following the line of reasoning in the case of *Pennsylvania* v. *Nelson* (350 U.S. 497), involving sedition laws, that the Congress will have by approving the pending legislation, preempted the field of State elections, to the exclusion of the States. Should this occur, Mr. President, the all-powerful Federal "Frankenstein" envisioned in the warning words of that great patriot, Patrick Henry, will have become a reality in our day and time.

Governor Randolph, in answering Mr. Henry, was sure that the language in article I, section 4, could not possibly be stretched to the extent visualized by Mr. Henry. Governor Randolph felt that section 2 of article I, which says that the qualifications of electors shall be fixed by the States, was sufficiently clear to negative any possibility of the Federal Government taking over State elections. I quote from Governor Randolph's answer:

His [Mr. Henry's] interpretation of elections must be founded on a misreprehension. The Constitution says, that the time, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof, but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators. It says, in another place, "that the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." Who would have conceived it possible to deduce, from these clauses, that the power of election was thrown into the hands of the rich? As the electors of the Federal representatives are to have the same qualifications with those of the representatives of this State legislature, or, in other words, as the electors of the one are to be electors of the other, this suggestion is unwarrantable, unless he carries his supposition farther, and says that Virginia will agree to her own suicide, by modifying elections in such manner as to throw them into the hands of the rich. The honorable gentleman has not given us a fair object to be attacked; he has not given us any thing substantial to be examined (Elliott III, p. 202).

Mr. John Marshall, speaking in behalf of the Constitution said:

If there be no impropriety in the mode of electing the representatives, can any danger be apprehended? They are elected by those who can elect representatives in the State legislature (Elliott III supra, p. 230).

When article I, section 4, was read in its proper turn in the Virginia convention, having been previously discussed in general with the rest of the document:

Mr. Monroe wished that the honorable gentleman, who had been in the Federal Convention, would give information respecting the clause concerning elections. He wished to know why Congress had an ultimate control over the time, place, and manner of elections of Representatives, and the time and manner of that of Senators, and also why there was an exception as to the place of electing Senators (Elliott III, supra, p. 366).

It was found necessary to leave the regulation of tense, in the first place, to the State governments, as being best acquainted with the situation of the people, subject to the control of the General Government in order to enable it to produce uniformity and prevent its own dissolution. And, considering the State governments and general governments as distinct bodies, acting in different and independent capacities for the people, it was thought the particular regulations should be submitted to the former, and the general regulations to the latter.

Again, we see the framers of the Constitution intent on the protection of the provision for election by the States, in the event of their negligent failure to provide therefor. At all times they conceded the States' rights to provide for voting qualifications in their own limits more suitably than Congress could.

When Virginia finally ratified the Constitution they added a list of amendments which they suggested and sought. Among these was the following:

16. That Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for Senators, or Representatives, or either of them except when the legislature of any State shall neglect, refuse, or be disabled, by invasion or rebellion, to prescribe the same (Elliott III, supra, p. 661).

Again we see a State convention desiring that the meaning of the framers be put into unquestionably plain language.

New York, the 10th State to act, ratified the Constitution July 26, 1788. Apparently, as in most of the State conventions, section 2 of article I, met with approval, as there was no fault to be found with the provision that the qualifications of the electors should be the same as for those of the most numerous branch of the State legislature. But again we find dissatisfaction with the possibilities of abuse latent in section 4 of article I:

Mr. Jones rose and observed that it was a fact universally known that the present

confederation had not proved adequate to the purposes of good government. Whether this arose from the want of powers in the Federal head or from other causes, he would not pretend to determine. Some parts of the proposed plan appeared to him imperfect or at least not satisfactory. He did not think it right that Congress should have the power of prescribing or altering the time, place, and manner of holding elections. He apprehended that the clause might be so construed as to deprive the States of an essential right, which, in the true design of the Constitution, was to be reserved to them. He, therefore, wished the clause might be explained and proposed, for the purpose, the following amendment:

"Resolved as the opinion of the committee, That nothing in the Constitution, now under consideration shall be construed to authorize the Congress to make or alter regulations, in any State, respecting the times, places, or manner of holding elections for Senators or Representatives, unless the legislature of such State shall neglect or refuse to make laws or regulations for the purpose, or, from any circumstance, be incapable of making the same, and then only until the legislature of such State shall make provision in the premises."

The Honorable Mr. Jay said that, as far as he understood the ideas of the gentleman, he seemed to have doubt with respect to this paragraph, and feared it might be misconstrued and abused. He said that every government was imperfect, unless it had a power of reserving itself. Suppose that, by design or accident, the States should neglect to appoint representatives; certainly there should be some constitutional remedy for this evil. The obvious meaning of the paragraph was that, if this neglect should take place, Congress should have power, by law, to support the Government and prevent the dissolution of the Union. He believed this was the design of the Federal Convention (Elliott II, supra, p. 325).

Mr. Smith expressed his surprise that the gentleman should want such an explanation. He conceived that the amendment was founded on the fundamental principles of representative government. As the Constitution stood, the whole State might be a single district for election. This would be improper. The State should be divided into as many districts as it sends Representatives. The whole number of Representatives might otherwise be taken from a small part of the State, and the bulk of the people, therefore, might not be fully represented. He would say no more at present on the propriety of the amendment. The principle appeared to him so evident that he hardly knew how to reason upon it until he heard the arguments of the gentlemen in opposition.

Mr. Duane: "I will not examine the merits of the measure the gentleman recommends. If the proposed mode of election be the best, the legislature of this State will undoubtedly adopt it. But I wish the gentleman to prove that his plan will be practicable and will succeed. By the constitution of this State, the representatives are apportioned among the counties, and it is wisely left to the people to choose whom they will, in their several counties, without any further division into districts. Sir, how do we know the proposal will be agreeable to the other States? Is every State to be compelled to adopt our ideas on all subjects? If the gentleman will reflect, I believe he will be doubtful of the propriety of these things. Will it not seem extraordinary that any one State should presume to dictate to the Union? As the Constitution stands, it will be in the power of each State to regulate this important point. While the legislatures do their duty, the exercise of their discretion is sufficiently secured. Sir, this measure would carry with it a presumption which I should be sorry to see in the acts of this State. It is laying down as a principle that whatever may suit our interest or fancy should be imposed upon our sister States. This does not seem to correspond with that moderation which I hope to see in all the proceedings of this Convention."

Mr. Smith: "The gentleman misunderstands me. I did not mean the amendment to operate on the other States. They may use their discretion. The amendment is in the negative. The very design of it is to enable the States to act their discretion, without the control of Congress. So the gentleman's reasoning is directly against himself.

"If the argument had any force, it would go against proposing any amendment at all, because, says the gentleman, it would be dictating to the Union. What is the object of our consultations? For my part, I do not know, unless we are to express our sentiments of the Constitution before we adopt it.

"It is only exercising the privilege of free men; and shall we be debarred from this? It is said it is left to the discretion of the States. If this were true, it would be all we contend for. But, sir, Congress can alter as they please any mode adopted by the States. What discretion is there here? The gentleman instances the constitution of New York as opposed to my argument. I believe that there are now gentlemen in this house who were members of the convention of this State, and who are inclined for an amendment like this. It is to be regretted that it was not adopted. The fact is, as your constitution stands, a man may have a seat in your legislature who is not elected by a majority of his constituents. For my part, I know of no principle that ought to be more fully established than the right of election by a majority."

Mr. Duane: "I neglected to make one observation which I think weighty. The mode of election recommended by the gentleman must be attended with great embarrassments. His idea is that a majority of all the votes should be necessary to return a member.

"I suppose a State divided into districts. How seldom will it happen that a majority of a district will unite their votes in favor of one man? In a neighboring State, where they have this mode of election, I have been told that it rarely happens that more than one-half unite in choice. The consequence is they are obliged to make a provision, by a previous election, for nomination and another election for appointment, thus suffering the inconvenience of a double election. If the proposition was adopted, I believe we should be seldom represented—the election must be lost. The gentleman will, therefore, I presume, either abandon his project or propose some remedy for the evil I have described."

Mr. Smith: "I think the example the gentleman adduces is in my favor. The States of Massachusetts and Connecticut have regulated elections in the mode I propose, but it has never been considered inconvenient, nor have the people ever been unrepresented. I mention this to show that the thing has not proved impracticable in those States. If not, why should it in New York?"

After some further conversation Mr. Lansing proposed the following modification of Mr. Smith's motion:

"And that nothing in this Constitution shall be construed to prevent the legislature of any State to pass laws, from time to time, to divide such State into as many convenient districts as the State shall be entitled to elect Representatives for Congress, nor to prevent such legislature from making provision that the electors in each district shall choose a citizen of the United States, who shall have been an inhabitant of the district for the term of 1 year immediately preceding the time of his election, for one of the Representatives of such State."

Which being added to the motion of Mr. Jones the committee passed the succeeding paragraphs without debate, till they came to the second clause of section 6 (Elliott II, supra, pp. 327–329).

On July 26, 1788, the ratification of the Constitution was effected, accompanied by a number of suggested amendments, among which was the one specifically defining those occasions on which Congress might exercise any power over the "time, place, and manner" of elections, as follows:

That the Congress shall not make or alter any regulation in any State respecting the times, places, and manner of holding elections for Senators and Representatives, unless the legislature of such State shall neglect or refuse to make laws or regulations for the purpose, or from any circumstance be incapable of making the same, and then only until the legislature of such State shall make provisions in the premises; provided that Congress may prescribe the time for the election of Representatives.

North Carolina remained reluctant and refused to ratify the Constitution until a convention of States was called and certain proposed amendments adopted. Again no exception was taken to section 2 of article I.

The first clause of the fourth section was read.

Mr. Spencer: "Mr. Chairman, it appears to me that this clause, giving the control over the time, place, and manner of holding elections to Congress, does away with the right of the people to choose the Representatives every second year, and impairs the right of the State legislatures to choose the Senators. I wish this matter to be explained."

Governor Johnson: "Mr. Chairman, I confess that I am a very great admirer of the new Constitution, but I cannot comprehend the reason of this part. The reason urged is that every government ought to have the power of continuing itself, and that, if the General Government had not this power, the State legislatures might neglect to regulate elections, whereby the Government might be discontinued. As long as the State legislatures have it in their power not to choose the Senators, this power in Congress appears to me altogether useless because they can put an end to the General Government by refusing to choose Senators. But I do not consider this such a blemish in the Constitution as that it ought, for that reason, to be rejected. I observe that every State which has adopted the Constitution and recommended amendments has given directions to remove this objection, and I hope, if this State adopts it, she will do the same."

Mr. Spencer: "Mr. Chairman, it is with great reluctance that I rise upon this important occasion. I have considered with some attention the subject before us. I have paid attention to the Constitution itself, and to the writings on both sides. I considered it on one side as well as on the other, in order to know whether it would be best to adopt it or not. I would not wish to insinuate any reflections on those gentlemen who formed it. I look upon it as a great performance. It has a great deal of merit in it, and it is, perhaps, as much as any set of men could have done. Even if it be true, what gentlemen have observed, that the gentlemen who were delegates to the Federal Convention were not instructed to form a new Constitution, but to amend the confederation, this will be immaterial, if it be proper to be adopted. It will be of equal benefit to us, if proper to be adopted in the whole, or in such parts as will be necessary, whether they were expressly delegated for

that purpose or not. This appears to me to be a reprehensive clause; because it seems to strike at the State legislatures, and seems to take away that power of elections which reason dictates they ought to have among themselves. It apparently looks forward to a consolidation of the Government of the United States, when the State legislatures may entirely decay away.

"This is one of the grounds, which have induced me to make objections to the new form of government. It appears to me that the State governments are not sufficiently secured, and that they may be swallowed up by the great mass of powers given to Congress. If that be the case, such power should not be given; for, from all the notions which we have concerning our happiness and well-being, the State governments are the basis of our happiness, security, and prosperity. A large extent of country ought to be divided into such a number of States as that the people may conveniently carry on their own government. This will render the government perfectly agreeable to the genius and wishes of the people. If the United States were to consist of 10 times as many States, they might all have a degree of harmony. Nothing would be wanting but some cement for their connection. On the contrary, if all the United States were to be swallowed up by the great mass of powers given to Congress, the parts that are more distant in this great empire would be governed with less energy. It would not suit the genius of the people to assist in the government. Nothing would support government, in such a case as that, but military coercion. Armies would be necessary in different parts of the United States. The expense which they would cost, and the burdens which they would render necessary to be laid upon the people, would be ruinous. I know of no way that is likely to produce the happiness of the people, but to preserve, as far as possible, the existence of the several States, so that they shall not be swallowed up.

"It has been said that the existence of the State governments is essential to that of the General Government, because they choose the Senators. By this clause, it is evident that it is in the power of Congress to make any alterations, except as to the place of choosing Senators. They may alter the time from 6 to 20 years, or to any time; for they have an unlimited control over the time of elections. They have also an absolute control over the election of the representatives. It deprives the people of the very mode of choosing them. It seems nearly to throw the whole power of election into the hands of Congress. It strikes at the mode, time, and place of choosing representatives. It puts all but the place of electing Senators in the hands of Congress. This supersedes the necessity of continuing the State legislatures. This is such an article as I can give no sanction to, because it strikes at the foundation of the governments on which depends the happiness of the States and the General Government. It is with reluctance I make the objection. I have the highest veneration for the characters of the framers of this Constitution. I mean to make objections only which are necessary to be made. I would not take up time unnecessarily. As to this matter, it strikes at the foundation of everything. I may say more when we come to that part which points out the mode of doing without the agency of the State legislatures."

Mr. Iredell: "Mr. Chairman, I am glad to see so much candor and moderation. The liberal sentiments expressed by the honorable gentleman who spoke last command my respect. No time can be better employed than endeavoring to remove, by fair and just reasoning, every objection which can be made to this Constitution. I apprehend that the honorable gentleman is mistaken as to the extent of the operation of this clause. He supposes that the control of the General Government over elections looks forward to a consolidation of the States, and that the general word 'time' may extend to 20, or any number of years. In my humble opinion this clause does by no means warrant such a construction. We ought to compare other parts with it. Does not the Constitution say that Representatives shall be chosen every second year? The right of choosing them, therefore, reverts to the people every second year. No instrument of writing ought to be construed absurdly, when a rational construction can be put upon it. If Congress can prolong the election to any time they please why is it said that Representatives shall be chosen every second year? They must be chosen every second year; but whether in the month of March, or January, or any other month, may be ascertained, at a future time, by regulations of Congress. The word 'time' refers only to the particular month and day within the 2 years. I heartily agree with the gentleman, that, if anything in this Constitution tended to the annihilation of the State government, instead of exciting the admiration of any man, it ought to excite the resentment and execration. No such wicked intention ought to be suffered. But the gentlemen who formed the Constitution had no such object; nor do I think there is the least ground for that jealousy. The very existence of the General Government depends on that of State governments. The State legislatures are to choose the Senators. Without a Senate there can be no Congress. The State legislatures are also to direct the manner of choosing the President. Unless therefore there are State legislatures to direct that manner, no President can be chosen. The same observation may be made as to the House of Representatives, since, as they are to be chosen by the electors of the most numerous branch of each State legislature, if there are no State legislatures, there are no persons to choose the House of Representatives. Thus it is evident that the very existence of the General Government depends on that of the State legislatures, and of course that their continuance cannot be endangered by it.

"An occasion may arise when the exercise of this ultimate power in Congress may be necessary; as, for instance, if a State should be involved in war, and its legislature could not assemble—as was the case of South Carolina, and occasionally of some other States, during the late war—it might also be useful for this reason—lest a few powerful States should combine, and make regulations concerning elections which might deprive many of the electors of a fair exercise of their rights, and thus injure the community, and occasion great dissatisfaction. And it seems natural and proper that every government should have in itself the means of its own preservation. A few of the great States might combine to prevent any election of representatives at all, and thus a majority might be wanting to do business; but it would not be so easy to destroy the Government by the nonelection of Senators, because one-third only are to go out at a time, and all the States will be equally represented in the Senate. It is not probable this power would be abused; for, if it should be, the State legislatures would immediately resent it, and their authority over the people will always be extremely great.

"These reasons induce me to think that the power is both necessary and useful. But I am sensible, great jealousy has been entertained concerning it; and as perhaps the danger of a combination, in the manner I have mentioned, to destroy or distress the General Government, is not very probable, it may be better to incur the risk, than occasion any discontent by suffering the clause to continue as it now stands. I should, therefore, not object to the recommendation of an amendment similar to that of other States that this power in Congress should only be exercised when a State legislature neglected or was disabled from making the regulations required."

Mr. Spencer: "Mr. Chairman, I did not mean to insinuate that designs were made, by the honorable gentlemen who composed the Federal Constitution, against our liberties. I only meant to say that the words in this place were exceeding vague. It may admit of the gentleman's construction; but it may admit of a contrary construction. In a matter of so great moment, words ought not to be so vague and indeterminate. I have said that the States are the basis on which the Government of the United States ought to rest, and which must render us secure. No man wishes more for a Federal Government that I do. I think it necessary for our happiness; but at the same time, when we form a government which must entail happiness or misery on posterity, nothing is of more consequence than settling it so as to exclude animosity and a contest between the general and individual governments. With respect to the mode here mentioned, they are words of very great extent. This clause provides that a Congress may at any time alter such regulations, except as to the places of choosing Senators. These words are so vague and uncertain, that it must ultimately destroy the whole liberty of the United States. It strikes at the very existence of the States, and supersedes the necessity of having them at all. I would therefore wish to have it amended in such a manner as that the Congress should not interfere but when the States refused or neglected to regulate elections."

Mr. Bloodworth: "Mr. Chairman, I trust that such learned arguments as are offered to reconcile our minds to such dangerous powers will not have the intended weight. The House of Representatives is the only democratical branch. This clause may destroy representation entirely. What does it say? 'The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.' Now, sir, does not this clause give an unlimited and unbounded power to Congress over the times, places, and manner of choosing Representatives? They may make the time of election so long, the place so inconvenient, and the manner so oppressive that it will entirely destroy representation. I hope gentlemen will exercise their own understanding on this occasion and not let their judgment be led away by these shining characters, for whom, however, I have the highest respect. This Constitution, if adopted in its present mode, must end in the subversion of our liberties. Suppose it takes place in North Carolina; can farmers elect them? No, sir; the elections may be in such a manner that men may be appointed who are not representatives of the people. This may exist, and it ought to be guarded against. As to the place, suppose Congress should order the elections to be held in the most inconvenient place in the most inconvenient district; could every person entitled to vote attend such a place? Suppose they should order it to be laid off into so many districts and order the election to be held within each district; yet may not their power over the manner of election enable them to exclude from voting every description of men they please? The democratic branch is so much endangered that no arguments can be made use of to satisfy my mind to it. The honorable gentleman has amused us with learned discussions and told us he will condescend to propose amendments. I hope

the Representatives of North Carolina will never swallow the Constitution until it is amended."

Mr. Goudy: "Mr. Chairman, the invasion of these States is urged as a reason for this clause. But why did they not mention that it should be only in cases of invasion? But that was not the reason, in my humble opinion. I fear it was a combination against our liberties. I ask, when we give them the purse in one hand and the sword in the other, what power have we left? It will lead to an aristocratical government and establish tyranny over us. We are free men, and we ought to have the privileges of such."

Governor Johnston: "Mr. Chairman, I do not impute any impure intentions to the gentlemen who formed this Constitution. I think it unwarrantable in anyone to do it. I believe that were there 20 conventions appointed, and as many constitutions formed, we never could get men more able and disinterested than those who formed this; nor a Constitution less exceptionable than that which is now before you. I am not apprehensive that this article will be attended with all the fatal consequences which the gentleman conceives. I conceive that Congress can have no other power than the States had. The States, with regard to elections, must be governed by the articles of the Constitution; so must Congress. But I believe the power, as it now stands, is unnecessary. I should be perfectly satisfied with it in the mode recommended by the worthy Member on my right hand. Although I should be extremely cautious to adopt any constitution that would endanger the rights and privileges of the people, I have no fear in adopting this Constitution, and then proposing amendments. I feel as much attachment to the rights and privileges of my country as any man in it; and if I thought anything in this Constitution tended to abridge these rights, I would not agree to it. I cannot conceive that this is the case. I have not the least doubt but it will be adopted by a very great majority of the States. For States who have been as jealous of their liberties as any in the world have adopted it, and they are some of the most powerful States. We shall have the assent of all the States in getting amendments.

"Some gentlemen have apprehensions that Congress will immediately conspire to destroy the liberties of their country. The men of whom Congress will consist are to be chosen from among ourselves. They will be in the same situation with us. They are to be bone of our bone and flesh of our flesh. They cannot injure us without injuring themselves. I have no doubt but we shall choose the best men in the community. Should different men be appointed, they are sufficiently responsible. I therefore think that no danger is to be apprehended."

Mr. McDowell: "Mr. Chairman, I have the highest esteem for the gentleman who spoke last. He has amused us with the fine characters of those who formed that government. Some were good, but some were very imperious, aristocratical, despotic, and monarchical. If parts of it are extremely good, other parts are very bad.

"The freedom of election is one of the greatest securities we have for our liberty and privileges. It was supposed by the members from Edenton, that the control over elections was only given to Congress to be used in case of invasion. I differ from him. That could not have been their intention, otherwise they could have expressed it. But, sir, it points forward to the time when there will be no State legislatures—to the consolidation of all the States. The States will be kept up as boards of elections. I think the same men could make a better constitution; for good government is not the work of a short time. They only had their own wisdom. Were they to go now they would have the wisdom of the United States. Every gentleman who must reflect on this must see it. The adoption of several other States is urged. I hope every gentleman stands for himself, will act according to his own judgment, and will pay no respect to the adoption by the other States. It may embarrass us in some political difficulties, but let us attend to the interest of our constituents."

Mr. Iredell answered that he stated the case of invasion as only one reason out of many for giving the ultimate control over elections to Congress.

Mr. Davie: "Mr. Chairman, a consolidation of the States is said by some gentlemen to have been intended. They insinuate that this was the cause of their giving this power of elections. If there were any seeds in this Constitution which might, one day, produce a consolidation it would, sir, with me, be an insuperable objection, I am so perfectly convinced that so extensive a country as this can never be managed by one consolidated Government. The Federal convention were as well convinced as the Members of this House, that the State governments were absolutely necessary to the existence of the Federal Government. They considered them as the great massive pillars on which this political fabric was to be extended and supported; and were fully persuaded that, when they were removed, or should molder down by time, the General Government must tumble into ruin. A very little reflection will show that no department of it can exist without the State governments.

"Let us begin with the House of Representatives. Who are to vote for the Federal Representatives? Those who vote for the State representatives. If the State government vanishes, the General Government must vanish also. This is the foundation on which this Government was raised, and without which it cannot possibly exist.

"The next department is the Senate. How is it formed? By the States themselves. Do they not choose them? Are they not created by them? And will they not have the interest of the States particularly at heart? The States, sir, can put a final period to the Government, as was observed by a gentleman who thought this power over elections unnecessary. If the State legislatures think proper, they may refuse to choose Senators, and the Government must be destroyed.

"Is not this Government a nerveless mass, a dead carcass, without the executive power? Let your representatives be the most vicious demons that ever existed; let them plot against the liberties of America; let them conspire against its happiness—all their machinations will not avail if not put in execution. By whom are their laws and projects to be executed? By the President. How is he created? By electors appointed by the people under the direction of the legislatures—by a union of the interest of the people and the State governments. The State governments can put a veto, at any time, on the General Government, by ceasing to continue the executive power. Admitting the Representatives or Senators could make corrupt laws, they can neither execute them themselves, nor appoint the executive. Now sir, I think it must be clear to every candid mind, that no part of this Government can be continued after the State governments lose their existence, or even their present forms. It may also be easily proved that all Federal governments possess an inherent weakness, which continually tends to their destruction. It is to be lamented that all governments of a Federal nature have been short lived.

"Such was the fate of the Achaean league, the Amphictyonic council and other ancient confederacies; and this opinion is confirmed by the uniform testimony of all history. There are instances in Europe of confederacies subsisting a considerable time; but their duration must be attributed to circumstances exterior to their government. The Germanic confederacy would not exist a moment, were it not for fear of the surrounding powers, and the interest of the Emperor. The history of this confederacy is but a series of factions, dissensions, bloodshed, and civil war. The confederacies of the Swiss, and United Netherlands, would long ago have been destroyed, from their imbecility, had it not been for the fear, and even the policy, of the bordering nations. It is impossible to construct such a government in such a manner as to give it any probable longevity.

"But, sir, there is an excellent principle in this proposed plan of Federal Government, which none of these confederacies had, and to the want of which, in a great measure, their imperfections may be justly attributed—I mean the principle of representation. I hope that, by the agency of this principle, if it be not immortal, it will at least be long lived. I thought it necessary to say this much to detect the futility of that unwarrantable suggestion, that we are to be swallowed up by a great consolidated government. Every part of this Federal Government is dependent on the constitution of State legislatures for its existence. The whole, sir, can never swallow up its parts.

"The gentleman from Edenton, Mr. Iredell, has pointed out the reasons of giving this control over elections to Congress, the principle of which was, to prevent a dissolution of the Government by designing States. If all the States were equally possessed of absolute power over their elections, without any control of Congress, danger might be justly apprehended where one State possesses as much territory as four or five others; and some of them, being thinly peopled now, will daily become more numerous and formidable. Without this control in Congress, those large States might successfully combine to destroy the General Government. It was therefore necessary to control any combination of this kind.

"Another principal reason was, that it would operate in favor of the people, against the ambitious designs of the Federal Senate. I will illustrate this by matter of fact. The history of the little State of Rhode Island is well known. An abandoned faction have seized on the reins of government, and frequently refused to have any representation in Congress. If Congress had the power of making the law of elections operate throughout the United States, no State could withdraw itself from the national councils without the consent of a majority of the Members of Congress. Had this been the case, that trifling State would not have withheld its representation. What once happened may happen again; and it was necessary to give Congress this power, to keep the Government in full operation. This being a Federal Government, and involving the interest of several States, and some acts requiring the assent of more than a majority, they ought to be able to keep their representation full. It would have been a solecism, to have a government without any means of self preservation. The confederation is the only instance of a government without such means, and is a nerveless system, as inadequate to every purpose of government as it is to the security of the liberties of the people of America. When the councils of America have this power over elections, they can, in spite of any faction in any particular State, give the people a representation.

"Uniformity in matters of election is also of the greatest consequence. They ought all to be judged by the same law and the same principles, and not be different in one State from what they are in another. At present, the manner of electing is different in different States. Some elect by ballot, and other viva voce. It will be more convenient to have the manner uniform in all the States.

"I shall now answer some observations made by the gentleman from Mecklenburg.

He has stated that this power over elections gave to Congress power to lengthen the time for which they were elected. Let us read this clause coolly, all prejudice aside, and determine whether this construction be warrantable. This clause runs thus: 'The times, places, manner, of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators.' I take it as a fundamental principle, which is beyond reach of the general or individual governments to alter, that the representatives shall be chosen every second year, and that the tenure of their office shall be for 2 years; that Senators be chosen every sixth year, and that the tenure of their office be for 6 years. I take it also as a principle, that the electors of the most numerous branch of the State legislatures are to elect the Federal Representatives.

"Congress has ultimately no power over elections, but what is primarily given to the State legislatures. If Congress had the power of prolonging the time, and so forth, as gentlemen observe, the same powers must be completely vested in the State legislatures.

"I call upon every gentleman candidly to declare, whether the State legislatures have the power of altering the time of elections for Representatives from 2 to 4 years, or Senators from 6 to 12; and whether they have the power to require any other qualification than those of the most numerous branch of the State legislatures; and also whether they have any other power over the manner of elections, any more than the mere mode of the act of choosing; or whether they shall be held by sheriffs, as contradistinguished from any other officer; or whether they shall be by votes, as contradistinguished from ballots, or any other way. If gentlemen will pay attention, they will find that, in the latter part of this clause, Congress has no power but what was given to the States in the first part of the same clause. They may alter the manner of holding the election, but cannot alter the tenure of their office. They cannot alter the nature of elections; for it is established, as fundamental principles, that the electors of the most numerous branch of the State legislature shall elect the Federal Representatives, and that the tenure of their office shall be for 2 years; and likewise, that the Senators shall be elected by the legislatures, and that the tenure of their office shall be for 6 years. When gentlemen view the clause accurately, and see that Congress have only the same power which was in the State legislature, they will not be alarmed. The learned doctor on my right, Mr. Spencer, has also said that Congress might lengthen the time of elections. I am willing to appeal grammatical construction and punctuation. Let me read this, as it stands on paper." (Here he read the clause different ways expressing the same sense.) "Here, in the first part of the clause, this power over elections is given to the States, and in the latter part the same power is given to Congress, and extending only to the time of holding, the place of holding, and the manner of holding the elections. Is this not the plain, literal, and grammatical construction of the clause? Is it possible to put any other construction on it, without departing from the natural order, and without deviating from the general meaning of the words, and every rule of grammatical construction? Twist it, torture it, as you may, sir, it is impossible to fix a different sense upon it. The worthy gentleman from New Hanover, whose ardor for the liberty of his country I wish never to be damped, has insinuated that high characters might influence the members on this occasion. I declare, for my own part, I wish every man to be guided by his own conscience and understanding, and by nothing else. Every man has not been bred a politician, nor studied the science of government; yet, when a subject is explained, if the mind is unwarped by prejudice, and not in the leading strings of other people, gentlemen will do what is right. Were this the case, I would risk my salvation on a right decision." (Elliott IV, supra, p. 50.)

Note particularly what Mr. Davie said:

They cannot alter the nature of the elections; for it is established as fundamental principles that the electors of the most numerous branch of the State legislature shall elect the Federal Representatives.

Continuing with Mr. Davie's remarks:

This clause, sir, has been the occasion of much groundless alarm and has been the favorite theme of declamation out of doors. I now call upon the gentlemen of the opposition to show that it contains the mischiefs with which they have alarmed and agitated the public mind, and I defy them to support the construction they have put upon it by one single plausible reason. The gentleman from New Hanover has said, in objection to this clause, that Congress may appoint the most inconvenient place in the most inconvenient district, and make the manner of election so oppressive as entirely to destroy representation. If this is considered as possible, he should also reflect that the State legislatures may do the same thing. But this can never happen, sir, until the whole mass of the people become corrupt, when all parchment securities will be of little service. Does that gentleman or any other gentleman who has the smallest acquaintance with human nature or the spirit of America suppose that the people will passively relinquish privileges or suffer the usurpation of powers unwarranted by the Constitution? Does not the right of electing Representatives revert to the people every second year? There is nothing in this clause that can impede or destroy this reversion; and although the particular time of year, the particular place in a county or a district, or the particular mode in which elections are to be held, as whether by vote or ballot, be left to Congress to direct, yet this can never deprive the people of the rights or privilege of election. He has also added that the democratical branch was in danger from this clause, and with some other gentlemen took it for granted that an aristocracy must arise out of the General Government. This, I take it, from the very nature of the thing, can never happen. Aristocracies grow out of the combination of a few powerful families, where the country or people upon which they are to operate are immediately under their influence, whereas the interest and influence of this Government are too weak and too much diffused ever to bring about such an event. The confidence of the people, acquired by a wise and virtuous conduct, is the only influence the members of the Federal Government can ever have. When aristocracies are formed, they will arise within the individual States. It is, therefore, absolutely necessary that Congress should have a constitutional power to give the people at large a representation in the Government in order to break and control such dangerous combinations. Let gentlemen show when and how this aristocracy they talk of is to arise out of this Constitution. Are the first members to perpetuate themselves? Is the Constitution to be attacked by such absurd assertions as these and charged with defects with which it has no possible connection? (Elliott IV, supra, p. 66).

Mr. Maclaine said:

Mr. Chairman, I thought it very extraordinary that the gentleman who was last on the floor should say that Congress could do what they please with respect to elections, and be warranted by this clause. The gentleman from Halifax, Mr. Davie, has put that construction upon it which reason and commonsense will put upon it. Lawyers will often differ on a point of view, but people will seldom differ about so very plain a thing as this (Elliott IV. supra, pp. 68, 69).

Mr. Steele: "Mr. Chairman, the gentleman has said that the five Representatives which this State shall be entitled to send to the General Government, will go from the seashore. What reason has he to say they will go from the seashore? The time, place, and manner of holding elections are to be prescribed by the legislatures. Our legislature is to regulate the first election, at any event. They will regulate it as they think proper. They may, and most probably will, lay the State off into districts. Who are to vote for them? Every man who has a right to vote for a representative to our legislature will ever have a right to vote for a Representative to the General Government. Does it not expressly provide that the electors in each State shall have the qualifications requisite for the most numerous branch of the State legislature? Can they, without a most manifest violation of the Constitution, alter the qualifications of the electors? The power over the manner of elections does not include that of saying who shall vote: The Constitution expressly states the qualifications which entitle a man to vote for a State representative. It is, then, clearly and indubitably fixed and determined who shall be the electors; and the power over the manner only enables them to determine how these electors shall elect—whether by ballot, or by vote, or by any other way. Is it not a maxim of universal jurisprudence, of reason and commonsense that an instrument or deed of writing shall be so construed as to give validity to all parts of it, if it can be done without involving any absurdity? By construing it in the plain obvious way I have mentioned, all parts will be valid" (Elliott IV, supra, p. 71).

These words should be italicized and underscored in our minds. They state absolutely, that under the Constitution as written, Congress can never constitutionally regulate the qualifications of electors. I agree wholeheartedly with Mr. Steele's interpretation of article I of our Constitution. Yet in spite of this clear and unequivocal reservation to the States of the right to fix the qualifications of electors, the Congress has been besieged in recent years with proposals to supplant the States and place this power in the hands of the Federal Government. The proposal to abolish State poll-tax requirements is one example of the legislation I refer to. Certainly our Founding Fathers had no intention of having the States judgment as to what qualifications an elector should have, superseded by the judgment of the Federal Government. I believe I have quoted sufficiently from the statements of those who took an active part in drafting the Constitution, and in having it ratified by the Thirteen Colonies, to refute any arguments to the contrary. The right of the States to restrict suffrage to freeholders, or to deny suffrage to persons who had been convicted of crimes, and so forth, was never disputed; therefore, I ask, how could the Congress today pass legislation abolishing the poll-tax requirements of certain States, without doing violence not only to the express language of the Constitution, but to the obvious and clearly enunciated wishes of

our Founding Fathers? Likewise, Mr. President, how can we now, today, be contemplating the enactment of the right-to-vote bill presently before us, which would enable the Attorney General to disregard State laws establishing administrative remedies for assuring all qualified persons of the right to vote? Can Senators not see that this provision, when coupled with the provision for Federal injunctive powers which has also been considered by the Senate, will result in the Federal judge who grants the findings substituting his judgment—that is, the judgment of the Federal Government—for the judgment of the registrar of voters or other State or local election officer—that is, the judgment of the State government—as to the qualification of the voter? Is this not a clear violation of the constitutional requirement in article I, section 2, that the States shall establish the qualifications of electors?

Now, Mr. President, reverting to the debates surrounding the ratification of the Constitution, we find that the North Carolina convention suggested this amendment:

4. That Congress shall not alter, modify or intefere in the time, places, or manner of holding elections for Senators and Representatives, or either of them, except when the legislature of any State shall neglect, refuse or be disabled by invasion or rebellion to prescribe the same. (See Elliott, 4, supra, p. 249.)

The convention adjourned August 4, 1788.

On May 29, 1790, Rhode Island ratified the Constitution, and listed a number of proposed amendments; among these was:

That Congress shall not alter, modify or interfere in, the times, places, or manner, of holding elections for Senators and Representatives, or either of them, except when the legislature of any State shall neglect, refuse or be disabled, by invasion or rebellion to prescribe the same, or in case when the provision made by the State is so imperfect as that no consequent election is had, and then only until the legislature of such State shall make provision in the premises (Elliott, I, supra, p. 336, amendment II).

Before discussing the two amendments to our Constitution which have to some extent infringed upon the right of the States to fix the qualifications of electors—that is, amendment No. 15 and amendment No. 19—it might be helpful for us to turn back the pages of history to the 1890's, to review and meditate upon what some of our predecessors in the Halls of Congress believed to be the proper construction and interpretation of article I of the Constitution.

In 1893 the Congress had before it for consideration H.R. 2331, a bill to repeal the Federal election laws. I have already discussd these Reconstruction period election laws, and because I intend to dwell upon them at some length further on in this address, I shall not burden the Senate with a full discussion of them at the moment. I should like to point out, however, that the Federal election laws, the repeal of which was before the 53d Congress, 1st session, and which was accomplished during the 2d session of the 53d Congress—these election laws, when stripped down to their basic provisions—were the forerunner of the pending right to vote bill. As I shall show the Senate at the appropriate time, the Federal election laws provided the teeth for the enforcement of section 2004 of the Revised Statutes. The 53d Congress repealed the Federal election laws in 1894. In effect, the Congress pulled the teeth from section 2004—it removed the power of the Federal Government to enforce the provisions of section 2004, and thus lifted the Federal yoke that had lain upon the election machinery of the Southern States since the close of the Civil War.

During the course of its deliberations on the bill repealing these Federal election laws, the House Committee on Election of President and Vice President and Representatives in Congress presented a report to the House embodying its recommendations in favor of repealing the election laws. The committee dwelt upon the constitutional provision relied on by proponents of Federal regulation of elections in the post Civil War period—article I, section 4, of the Constitution, which reads:

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

I should like now to read the analysis by the House committee, headed by Mr. Tucker, as to the meaning and scope of that constitutional provision. I quote from page 2 of Report No. 18 of the House of Representatives, 53d Congress, 1st session, September 20, 1893:

We shall invoke the simple method of construction laid down by the writers, of seeking first, from the words themselves, their intrinsic meaning, and then invite the testimony of those who made them as to their meaning and their intent in making them, and, finally, the construction put upon them by Congress itself and recognized authors on the Constitution.

We notice, first, that "the times, places, and manner of holding elections, etc., is primarily confided to" the legislature of each State; secondarily, it is given to the Congress.

The language itself and the arrangement of the two clauses show this:

"The times, places, and manner, etc., shall be prescribed by the legislature of each State.

"But the Congress may, by law, at any time make or alter, etc."

The first is original and primary, the second is permissive and contingent. The legislatures and Congress cannot both have original and primary power to act on the same subject at the same time. Such a conflict would never have been sanctioned. Nor can we believe that the men who draughted this section intended to distinguish it from every other in the Constitution in granting to two distinct and separate authorities coequal power over the same subject at the same time. Nor can we conceive a greater absurdity than the grant of plenary power to the legislatures of the States in the first clause of the section, only to be abrogated and annulled in the second clause of the same section.

We cannot believe that the intelligence which framed that great instrument, careful in avoiding any conflicts that would probably arise between the State and Federal authorities (for that hour was resonant with jealousies of power), deliberately placed this power into two distinct hands to be exercised, it may be, at the same time and in different ways; and it is equally improbable that the power given the legislatures of the States, as the authority best suited in the minds of the makers of the Constitution, to provide "the times, manner, and places of holding, etc.," was intended, without reason or cause, to be taken from them and arbitrarily assumed by Congress; and that, too, when there had been no failure on the parts of the States to provide the necessary machinery and no impropriety in the machinery provided.

We conclude, therefore, that the obvious and plain meaning of the section under discussion is that the legislature of each State should have the primary authority to prescribe "the times, places, and manner of holding elections, etc." and that Congress should have such power ultimately. When? For what cause? What circumstances or conditions prevailing in the States shall be sufficient to cause a forfeiture of this right in the legislatures of each? This section and the Constitution are silent upon this subject; but the history of the adoption of the Constitution and the contemporaneous evidence of those who made it supply the answers.

Of the original 13 States that framed the Constitution seven were outspoken on the subject, while in some of the others there was likewise a strong sentiment against the adoption of the Constitution containing this and other sections.

The language of some of them is most striking and instructive. On the 6th of February, 1788, Massachusetts, through her State convention, presided over by the great Revolutionary patriot, John Hancock, ratified the Constitution. In the report of ratification, after expressing the opinion that certain amendments should be made to "remove the fears and quiet the apprehension of many of the good people of this Commonwealth, and more effectually guard against an undue administration of the Federal Government," the following alteration of and provision to the Constitution is suggested:

"That Congress do not exercise the powers vested in them by the fourth section of the first article, but in cases when a State shall neglect or refuse to make the regulations therein mentioned, or shall make regulations subversive of the rights of the people to a free and equal representation in Congress, agreeably to the Constitution."

Not satisfied with the mere suggestion of such amendment, and with a prophetic fear that, if such suggestions were not adopted by the first Congress to assemble under the Constitution, some erring son of this ancient Commonwealth might some day waver in his support of those principles in the Halls of Congress, the convention added this strong language:

"And the convention do, in the name and in behalf of the people of this Commonwealth, enjoin it upon their Representatives in Congress at all times, until the alterations and provisions aforesaid have been considered agreeably to the fifth article of the said Constitution, to exert all their influence, and use all reasonable and legal methods to obtain a ratification of said alterations and provisions, in such manner as is provided in the said article."

South Carolina ratified on the 23d of May, 1788, with the following recommendation:

"And whereas it is essential to the preservation of the rights reserved to the several States, and the freedom of the people, under the operation of a General Government that the right of prescribing the manner, time, and places of holding the elections to the Federal legislature, should be forever inseparably annexed to the sovereignty of the several States: This convention doth declare that the same ought to remain to all posterity a perpetual and fundamental right in the local, exclusive of the interference of the General Government, except in cases

where the legislatures of the States shall refuse or neglect to perform and fulfill the same according to the tenor of the said Constitution."

New Hampshire ratified June 21, 1788, and made a recommendation in the same language used by the State of Massachusetts.

Virginia, on the 26th of June 1788, ratified with a recommendation in the following words:

"That Congress shall not alter, modify, or interfere in the times, places, and manner of holding elections for Senators and Representatives, or either of them, except when the legislature of any State shall neglect, refuse, or be disabled by invasion or rebellion to prescribe the same."

August 1, 1788, North Carolina ratified, having held out against ratification on account of this and other objectionable clauses. The convention recommended an amendment in the same language as did the State of Virginia.

New York ratified July 26, 1788, and the recommendations of its convention are in some respects the strongest of any on this subject. Before the formal statement of ratification, a declaration of rights is set forth in which, among other provisions, we find:

"That nothing contained in the said Constitution is to be construed to prevent the legislature of any State from passing laws at its discretion, from time to time, to divide such State into convenient districts and to apportion its Representatives to and amongst such districts.

"Under these impressions and declaring that the rights aforesaid cannot be abridged or violated, and that the explanations aforesaid are consistent with the said Constitution, and in confidence that the amendments which shall have been proposed to the said Constitution will receive an early and mature consideration, we, the said delegates * * * do, by these presents, assent to and ratify the said Constitution.

"In full confidence, nevertheless, that until a convention shall be called and convened for proposing amendments to the Constitution * * * that the Congress will not make or alter any regulations in this State respecting the times, places, and manner of holding elections for Senators or Representatives unless the legislature in this State shall neglect or refuse to make laws or regulations for the purpose, or from any circumstance be incapable of making the same, and that in those cases such power will duly be exercised until the legislature of this State shall make provision in the premises."

That was in the State of New York.

And in accordance with this declaration the convention suggested an amendment to Congress embodying the above idea.

Rhode Island did not ratify until June 26, 1790, and the language of her convention on the subject and the amendments suggested were in almost the identical words of those of the State of New York, only stronger. The above extracts have been made that it might be seen how strong was the feeling on this subject at the time of the ratification of the Constitution, and that the Constitution itself was only finally adopted in the faith and belief of a majority of the States that Congress would never exercise this power except when the States had failed to do so, or from any cause could not do so.

Not alone did the States above enumerated speak out with no uncertain sound, but in the debates in the Pennsylvania convention to ratify the Constitution, James Wilson, a member of the Federal convention that framed the Constitution, and a member of the State convention, explained this provision to mean in effect that the States were primarily to act, and Congress only in case of their failure to do so; and the convention recommended an amendment in the following words:

"That Congress shall not have power to make or alter regulations concerning the time, place, and manner of electing Senators and Representatives, except in case of neglect or refusal by the State to make regulations for the purpose; and then only for such time as such neglect or refusal shall continue."

In the 58th number of the Federalist Mr. Hamilton discusses this subject and says:

"They (the convention) have submitted the regulation of elections for the Federal Government, in the first instance, to the local administrations; which in ordinary cases, and when no improper views prevail may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety."

Judge Storey, in his Commentaries on the Constitution, volume 2, chapter XI, discusses the whole subject and holds that the power will not be exercised by Congress unless "an extreme necessity or a very urgent exigency" should arise (secs. 820, 823, 824, et seq. See also I Tucker's Black. Comm. App., 191, 192; Curtis on the Constitution, 479, 480).

We conclude, therefore, that Congress has the power to "prescribe the times, places, and manner of holding elections" for Members of Congress, but that such power is contingent and conditional only, not original and primary.

Under what conditions or upon what contingency?

If we accept the evidence of the States in their State conventions, ratifying the Constitution, and that of the men who made the Constitution, the conditions are—

First. Where the States refuse to provide the necessary machinery for elections; and

Second. Where they are unable to do so for any cause, rebellion, etc.

Mr. Madison, in the Virginia convention, when asked his opinion of this section, said:

"It was found necessary to leave the regulation of these (times, places, and manner) in the first place to the State governments as being best acquainted with the situation of the people, subject to the control of the General Government, in order to enable it to produce uniformity and prevent its own dissolution. * * * Were they exclusively under the control of the State governments, the General Government might easily be dissolved. But if they be regulated properly by the State legislatures, the congressional control will very probably never be exercised."

Mr. John Jay, subsequently Chief Justice of the United States, in the New York convention said, when this clause was under discussion.

"That every government was imperfect unless it had a power of preserving itself. Suppose that by design or accident the States should neglect to appoint the Representatives, certainly there should be some constitutional remedy for this evil. The obvious meaning of the paragraph was that, if this neglect should take place, Congress should have power by law to support the Government and prevent the dissolution of the Union. He believed this was the design of the Federal convention."

Again, Mr. Madison says:

"This was meant to give the National Legislature a power not only to alter the provisions of the States, but to make regulations in case the States should fail or refuse altogether" (Madison Papers, vol. 3, 1282).

Has any State refused to provide the necessary election machinery, or is any State unable to do so for any cause, or what "extraordinary circumstances," what "extreme necessity," what "urgent exigency" exists now for the exercise of this power by Congress? None has been suggested, and we confidently assert none can be.

For Congress to attempt to exercise this power now in this bill against the protests of a majority of the States that made the Constitution, and when those States only ratified it upon the faith and assurance that this and other powers would never be exercised except under certain conditions, which have not arisen, is a fraud upon the Constitution that should not be tolerated.

But, conceding for the moment that section 4, article 1, gives to Congress the full powers claimed by the advocates of this bill, still it must be construed in the light of the subsequent section (8) of the same article, which declares that Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." Admit the power to be ample in the Constitution, yet the same authority limits the legislative branch of the Government in the enactment of laws, to such as shall be "necessary and proper" for carrying into execution the foregoing power. In *Hepburn* v. *Griswold* (8 Wall., 614), Chief Justice Chase, in defining these words, says the words "necessary and proper were intended to have a sense, to use the words of Justice Story, 'at once admonitory and directory,' and to require that the means used in the execution of an express power should be 'bona fide appropriate to the end.' "

But again, the States for a hundred years and more have provided election laws, appointed officers for their proper execution, and provided the machinery of election. They have prescribed duties for such officers, and have imposed penalties for the failure to discharge these duties. This machinery and these officers, without distinction as to the character of the election, whether it be State or Federal, have the same duties imposed upon them in all essential qualities. With this state of things we find these statutes which are sought to be repealed create officers whose duties it shall be to supervise, scrutinize, and watch every act of the officers of the States.

This of itself must create friction and the history of the country since the enactment of these laws has demonstrated their unwisdom in this respect. The power to guard, scrutinize, and inspect implies the power to correct or prevent that which is scrutinized. The power to supervise implies the power to compel the doing or to prevent the doing of the thing which is the subject of the supervision. How then can the United States, by its supervisors and deputy marshals, supervise an election under a law which it has not enacted or scrutinize the registration (a condition of suffrage in many of the States) when the right of suffrage emanates from the State itself and the State alone can determine it?

We have the same conditions now, Mr. President. They are no different; and I daresay that the Attorney General got his cue from that very act, in proposing the referee provision.

I read further:

The second section of article I of the Constitution declares: "The House of Representatives shall be composed of Members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

This leaves the right of suffrage and the conditions of suffrage in the States. By what authority, then, can a Federal officer, by challenge or otherwise at the polls or on registration day, determine the question of suffrage which the Constitution of the United States has left solely to the States to determine?

Mr. President, the question asked in the year 1893 by the House Committee on Elections of the 53d Congress could not then—that is, in the year 1893—be answered in anything but the negative. I ask the question again today: By what authority can a Federal officer—under the Federal elections laws of the Reconstruction Period—or a Federal judge—under the pending "right to vote" bill—determine the question of suffrage which the Constitution of the United States has left solely to the States to determine? Surely there can be but one answer, Mr. President: No such authority exists; and any legislation passed by the Congress in attempting to vest such authority in a Federal officer, be he an agent of the executive, judicial, or legislative branch of the Federal Government, is clearly unconstitutional. It is even more than that, Mr. President; in the words of our predecessors of the 53d Congress, "It is a fraud upon the Constitution," and it should not be tolerated.

I turn now to examine the amendments to our Federal Constitution as they affect section 2 of article I, which says, again, that "the electors of representatives to Congress shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

Some amendments have affected suffrage problems. I shall list, first, the amendments, and then discuss them.

Section 2 of article XIV says that as to any State which denies the right to vote to any male citizen over 21 years of age, except for participation in rebellion, or other crime, the basis of representation therein shall be proportionately reduced. This regulation in itself recognizes the right of the State to deny such right if it wishes.

Article XV, which deals with Negro suffrage, is as follows:

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

This was proposed by Congress on February 26, 1869—915 Stat. L. 346—and was ratified by three-fourths of the States by February 3, 1870.

Article XVII, election of Senators:

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for 6 years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Article XIX, woman's suffrage:

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

This was proposed by Congress on June 5, 1919—41 Stat. L. 362—and was ratified by three-fourths of the States by August 26, 1920.

Article XV, as we all know, came on the heels of the Civil War, and as a result thereof. It is rather significant, to my mind, that even at that time Congress made no attempt to interfere by legislation with the right of the States to establish qualifications of electors, and recognized that an amendment to the Constitution was the only method of modifying or limiting that right constitutionally.

That is, with the Civil War a recent memory, and the subject of former slavery still a bitter topic, with the abolitionists riding high, and the victorious North contending only with carpetbag governments of the worst type in the as yet unreconstructed South, Congress still knew its limitations sufficiently to realize that the qualifications of electors had been left entirely to the State governments by the Constitution, and that the only way to vary such qualifications or affect them at all was to amend the instrument. The amendment itself is specifically self-limiting in scope, and leaves the rest of the field in the States' hands.

Though the sovereignty is in the people, as a practical fact it resides in those persons who by the constitution of the State are permitted to exercise the elective franchise. The whole subject of the regulations of elections, including the prescribing of qualifications for suffrage, is left by the national Constitution to the several States, except as it is provided by that instrument that the electors for representatives in Congress shall have the qualifications requisite for electors of the most numerous branch of the State legislature, and as the 15th amendment forbids denying to citizens the right to vote on account of race, color, or previous condition of servitude.

Participation in the elective franchise is a privilege rather than a right, and it is granted or denied on grounds of general policy; the prevailing view being that it should be as general as possible consistent with the public safety. Aliens are generally excluded, though in some States they are allowed to vote after residence for a specified period, provided they have declared their intention to become citizens in the manner prescribed by law. The 15th amendment, it will be seen, does not forbid denying the franchise to citizens except upon certain specified grounds, and it is a matter of public history that its purpose was to prevent discriminations in this regard as against persons of African descent (Cooley, "Constitutional Limitations," p. 752).

While I shall discuss later some decisions on the subject of the 15th amendment, and also shall go into detail on the State constitutions, I should like here to quote a general statement concerning conditions between 1812 and 1867 concerning the Negro vote:

Race: Increasing race prejudice had well-nigh eliminated the Negro as an elector. All but six States had written "white" in their constitutions: Massachusetts, New Hampshire, Vermont, Rhode Island, Maine, and New York. However, in the latter State, in order to vote, the Negro must own $250 worth of property on which he had paid the taxes and reside in the Commonwealth "2 years longer than was required of a white man." It is alleged that public opinion was so averse to his voting even in the New England States that the Negro was kept away from the polls in all but two. Chancellor Kent says that the Negro really voted in Maine alone. At least it is a significant fact that New Hampshire (1857) and Vermont (1858) found it necessary to enact laws that Negroes should not be excluded from the polls. Therefore, it fell out that just before the Negro was to have suffrage granted him as a special favor by the 15th amendment he was kept from the exercise of the elective franchise most completely. The aforesaid amendment was revolutionary in more ways than one; it struck the word "white" from the constitutions of over 30 States. As an indication of what was to become a local, though intensely bitter race and suffrage problem about the middle of the following period, note that Oregon in 1857 disfranchised Chinese. Yet the general race test disappeared (McCulloch, "Suffrage and Its Problems," p. 47).

Speaking of the period immediately following the Civil War, McCulloch says:

Period of problems: This period inherited three growing problems: The question of Negro suffrage, deadlocked in the preceding period, at once became paramount as a post-war measure; the agitation for woman suffrage, stilled during the time of civil strife, was renewed by its zealous advocates; the tendency to allow aliens to vote on mere declarations of intent to become citizens was increased notably. During the epoch some sort of solution is attempted for each of these problems.

At the outset of the period the elective franchise was secured for the Negro by constitutional amendment. The 13th amendment had made him a man instead of a chattel. The 14th amendment conferred citizenship upon him and incidentally endeavored to insure the ballot to him by providing that when any male citizens over 21 years of age were excluded from the elective franchise (except for crime) the basis of representation of said State in Congress should be proportionately reduced. This incidental treatment of the problem of Negro suffrage not promising satisfactory results, more direct and drastic means were found. The 15th amendment (1870) provided that the right of citizens of the United States to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.

Therefore, the out-and-out race test for suffrage was displaced irrevocably. However, it should be noted that suffrage was still a Commonwealth matter. The United States, through congressional action or court decision could interfere in questions affecting the elective franchise only when the provisions of the 14th and 15th amendments were violated (McCulloch, supra, pp. 51 and 52).

In the struggle to preserve the Union, which incidentally freed the slaves, the North experienced at least a partial change of sentiment. Especially as the difficult work of Reconstruction wore on, the expedient of giving the newly made freemen the ballot gained ground. Yet even in 1865 the Republican Party was opposed to the extension of the franchise to the Negroes. Neither Lincoln nor Johnson proposed such a measure. But finally Sumner's plan prevailed as a party policy. Argument: The Negro was still in subjection, while the South had been

freed from slavery; the ballot would make him free indeed. In fact, at that time, it seemed to be a choice between maintaining an army at the South or securing the ballot for the Negro; the latter was regarded as the lesser of two evils. The weapon proved a boomerang (McCulloch, supra, pp. 80 and 81).

The radical Republicans insisted on the Negro becoming an elector in the South, while he was disfranchised in the vast majority of the northern Commonwealths. The North threw theories and prejudices to the winds and sought to find a practical solution of the vexing question, "What to do with the Negro?" The 13th Amendment destroyed slavery; the 14th made the Negro a citizen, but not a voter. Finally the 15th sought to secure the elective franchise for and to him, in spite of race prejudice and existing adverse and discouraging conditions. Shellenbarger, who proposed a substitute prohibiting any disfranchisement of males 21 years of age, except for crime, pointed out that this amendment would suggest other disqualifying tests than race, color, and so forth. Subsequent events have shown that this desperate expedient was futile. While the amendment secured temporarily the widest extension of the elective franchise to the Negro, it was extreme and unwise.

What was secured for the Negro by the 15th amendment? It did not confer suffrage upon him nor upon anyone. The States were still left wide latitude aside from its inhibitions. It merely prevented discrimination on account of "race, color, or previous condition of servitude." However, it has been held to confer suffrage indirectly; in extending the franchise to any class of inhabitants, Negroes may not be excluded. To secure a decision under the 15th amendment it has been held that the indictment must specify that the elector was excluded because he was a Negro—just such an inference is not sufficient. While power is conferred upon Congress to legislate upon the subject of Commonwealth elections, this may not be done except when an otherwise qualified voter is denied that privilege because of race, color, or previous condition of servitude. Hence, the redress formerly secured by this amendment was not so sweeping as would at first appear.

The suffrage issue was injected into a Mississippi case, but the Supreme Court upheld the decisions of the State court; while in a Virginia contention the Court refused to assume jurisdiction. The decision in the case of an Alabama Negro, wherein it was held by the Supreme Court that that tribunal did not have jurisdiction, maintained that the offense, and hence a remedy, was political rather than judicial. The inference was that recourse must be had through Congress acting under the 14th amendment. There has been little likelihood of such action. However, the decision declaring the Oklahoma grandfather clause unconstitutional is a departure from precedent. It would seem that the 15th amendment is to become more effective. The disappearance of shifty and temporary expedients, used under the guise of legality to disfranchise the Negro in the South should be welcomed. Even the South seems to accept this view of this matter.

The immediate result of the Reconstruction policy was to put the southern Commonwealth under Negro rule. Led by political adventurers, the ignorant Negroes gave the South such a government as has been a nightmare to that section ever since. The big offices were appropriated by the carpetbaggers—the little ones being left to the ignorant Negroes. There was a reign of fraud and extravagance. Preceding 1861 South Carolina's average annual stationery bill had been $400; for 1873 it was $16,000. Six million dollars went through fraudulent bonds; this shameless plundering of the South went on for a time unchecked. The estimated carpetbag deficit of the 11 Southern States totaled $298,020,641.80. They spell "pray" with an "e," and thus spelled, they obey the apostolic injunction to "pray without ceasing." Such a state of misgovernment could not long endure (McCulloch, supra, pp. 82, 83, and 85).

It is interesting historically to note what some of the Nation's leaders thought of the 15th amendment.

Neither Lincoln nor Johnson wished universal manhood suffrage immediately extended to the freedman. Lincoln preferred that it be conferred gradually, first securing it to the very intelligent (those able to read and write) and to those who had served in the Union Army. Johnson advised a similar plan: extending the ballot to those Negroes owning a little property and those able to read and write. The evident purpose was to allow the southern Commonwealths to solve the problem—the National Government insisting those Negroes qualified be allowed to vote. Nor was this plan of solution vain or hopeless. While the South was deeply prejudiced against Negro suffrage, many of the leading men of that section took the same view of the matter. Wade Hampton and L. Q. C. Lamar may be taken as typical men of the South who saw the issue clearly.

Wade Hampton, of South Carolina wrote: "I realized in 1867 that when a man has been made a citizen of the United States he could not be debarred from voting on account of his color. Such an exclusion would be opposed to the entire theory of republican institutions." But for the untoward events that preceded the adoption of the 15th amendment the South might have been spared much of the bitterness of Reconstruction and the Nation the vexing problems arising from indiscriminate Negro suffrage. The whole people lost their only friend in Lincoln; the troublesome times needed his great mind and greater heart. While the South was proud and unbending even in defeat, Congress was actuated by unstatesmanlike motives and forced upon the prostrate Commonwealths an intolerable political situation.

The ablest men of the time were averse to conferring the ballot on the Negro irrespective of his fitness for it. Beecher in 1865 pointed out the futility of such a course and concluded: "You will never be able to secure the elective franchise for the Negro and maintain it for him, except by making him so intelligent that men cannot deny it to him." And so it has fallen out. But the cautious method of treatment was abruptly ended with Lincoln's death and Johnson's unfortunate quarrel with Congress. The extreme faction gained control with dire results for the great suffrage problem. As the hasty system inaugurated by the Reconstruction policy of Congress began to bear fruit, even the Negroes deplored the increased degradation of their race. They realized that they were merely tools. The political adventurer from the North pulled the strings (McCulloch, supra, pp. 91, 92, and 93).

Mr. President, McCulloch says, and with emphasis, that this particularized provision in the Constitution to protect the voting rights of the Negro does not affect State control over every other voting qualification. Certainly there is nothing in the 15th amendment which denies to the States the right to fix other qualifications for voters, provided those voting qualifications do not discriminate against a prospective voter on the basis of race, color, or previous condition of servitude. The rights of States to impose, if they see fit, a requirement that voters first pay a State poll tax before being eligible to vote is not prohibited to the States under the 15th amendment. Neither is it prohibited to the States under article I, section 2, which our Supreme Court has interpreted to bestow a "Federal right to vote" upon U.S. citizens which not only cannot be abridged by the Federal or State governments, but by private persons as well. And the same argument holds true, Mr. President, as to the provisions of the pending "right to vote" bill—which would permit Federal judges to usurp the administrative discretion of State registration and election officers, in passing upon the qualifications of voters.

State control is reaffirmed in article XVII which quotes word from word the tests for electors of Representatives in the first article, second section, of the Constitution, and makes that apply to the electors of Senators as well. In other words, the test that all electors qualified to vote for the most numerous branch of the State legislature shall be qualified to vote for Representatives, set out in 1787 at the Constitutional Convention, is reaffirmed and extended 150 years later.

The 19th amendment extends the right to vote to women.

I quote further from McCulloch:

The agitation for woman suffrage became more intense after the enfranchisement of the Negro and began to bear fruit in the multiplication of the number of States that granted school suffrage to women. Also municipal and bond suffrage was extended to women in a few instances. In the West a few Commonwealths bestowed upon woman the full elective franchise. Wyoming led in this movement; her full suffrage law bears the date of 1869.

The number of such States gradually but very slowly increased, extending the movement eastward. Then came the World War and another suffrage revolution. Woman suffrage became a war measure of almost spontaneous proportions. Because constitutional amendments were too slow, a number of State legislatures followed the questionable expedient of granting women the franchise for nonconstitutional offices. Years before, an amendment to the Constitution of the United States, following the lines of the 15th amendment and thereby securing the ballot for women, had been offered; but such proposals usually died in a congressional committee. During the war this amendment was brought forward with marked difference in its reception. As the prospective 19th amendment it was passed by Congress and submitted to the several States for ratification in 1919 and received the endorsment of the requisite number of Commonwealths in 1920. Like the former amendment (15th), the 19th amendment disturbs the Commonwealth regulation of suffrage as little as possible; it provides that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex" (McCulloch, supra, pp. 52 and 53).

Until this period, in spite of the agitation of women suffragists, the elective franchise had been confined to males. The constitution of every State so specified. The sagebrush territory of Wyoming had granted women full suffrage in 1869; but this departure only emphasized the universality

of the rule. Yet insistent agitation accomplished something. Following the chivalrous example set by Kentucky in 1838, other States allowed women to participate in school elections. While this was a sop thrown to the troublesome agitators for woman suffrage, there was also the idea in the minds of legislators that educational matters rather belonged in woman's sphere. This practice grew until 26 States had extended school suffrage to women. Along with this innovation came another, closely associated with the ownership of property: women were permitted to vote in municipal elections and in voting bonds. This extension of suffrage to women was not so general as that of school suffrage; only nine States saw fit to grant some sort of municipal suffrage to women. Meanwhile a few of the sparsely settled States of the Rocky Mountain region followed the pioneer, Wyoming, and extended full suffrage to women. In this section there were no large cities, and equally significant, the number of men greatly exceeded that of women. However, the movement gathered weight very slowly and by 1910 but four States had taken this advanced stand: Wyoming, Colorado, Utah, and Idaho. But, nothing having happened of startling nature because of woman suffrage in these Commonwealths, and agitation becoming more widespread and more insistent, the movement spread; and at the outbreak of the World War the number of States in which women had full suffrage had more than doubled: Washington, California, Oregon, Kansas, and Arizona had fully enfranchised women. During the World War suffrage events moved rapidly: Nevada and Montana were early added to the list, and then the movement invaded the East. After the United States entered the war, New York, Michigan, South Dakota, and Oklahoma extended the ballot to women. This secured full suffrage for women in 15 States. But even a more significant thing was happening. Since constitutional amendments move slowly, the legislatures of 15 States proceeded to grant women suffrage for nonconstitutional offices, this permitted women to vote for Congressmen and presidential electors. Frankly, woman suffrage had become a war issue. Under this stress the Anthony amendment was revived and, with the help of the President, pushed through Congress—receiving the required extraordinary majority, June 5, 1919. Then began the ratification by States. Few State legislatures were to meet at an early date in regular session, hence it was necessary for the Governors to call extra sessions—if the amendment was to be ratified in time for women to vote in the election of 1920. With remarkable celerity 35 States ratified. All States west of the Mississippi, excepting Louisiana, had approved the amendment. Most Southern States had rejected it or their legislatures had not been convened; while some New England Governors had refused to call extra sessions. This was the situation in midsummer. President Wilson, the chairmen of central committees, and presidential nominees brought great pressure to bear in the border States, which had neither ratified nor rejected the amendment; for each party was eager to secure the credit for ratification and thus have a catch appeal to women voters. Finally, after a bitter and close struggle, Tennessee ratified the 19th amendment, August 18, 1920; and the word "male" was stricken from the constitutions of 33 States (McCulloch, supra, pp. 60–62).

In an academic sense, woman suffrage is as old as Plato. However, his dream of women sharing in the political burdens of the state was no more real than were his asses frisking along the highway in the exuberance of republican freedom. It is a far cry from Greek civilization to that of the 20th century, and the enfranchised woman of today looks out on a vastly different world. The social position of modern women rests on a foundation laid far back in the past. It was for Christianity to give woman a new worth and dignity; she possessed an immortal individuality—a soul. Accordingly, the position of women has ever been the great and outstanding difference between pagan and Christian civilizations. However, it takes time for even religious truth to overcome fixed ideas and customs. Slowly and painfully the world achieved progress. The rise of the Puritan home in England marks the beginning of the highest position ever assigned to woman. Even then, with marked gains in individual liberty and social standing, political equality for woman was far in the future. If the relative estimate of womanhood is a sure criterion of civilization, then America enjoys the highest in the world. Therefore, in the United States has come the first agitation for and the widest extension of sexless political equality.

The question of woman suffrage in the United States has been closely associated with that of the Negro. The half dozen women delegates sent from America to the World's Antislavery Convention, which met in London in June 1840 were emphatically refused seats. Therefore, these women came home pledged to agitate for woman suffrage. Thus, in trying to free the Negro from the bonds of slavery, was the question of woman suffrage precipitated. After several years of local agitation, the first woman's-rights convention met in Seneca Falls, N.Y., in July 1848. Other sections of the country followed this example, and the woman suffrage question was fairly launched. The movement in England did not get under way until 1865. English women had enjoyed municipal suffrage, based like that of men on guild, freehold, and property bases. Thereafter the struggle was begun for parliamentary suffrage. The contest there has been long and bitter. The methods employed by the agitators, while quite British, would have been wholly out of place in America. Finally under stress of the World War, partial success was achieved: In 1918 parliamentary suffrage was extended to some 6 million women, and in 1928 to all.

At the Declaration of Independence universal manhood suffrage was not even a future event in the minds of publicists. Certainly no one contemplated the extension of the ballot to women. Yet, soon thereafter women actually voted. The first instance of undoubted authenticity was in New Jersey in 1797. Women then voted under the Constitution of 1776, which declared that all inhabitants were electors—if otherwise qualified. This was clearly an oversight on the part of the lawmakers and was corrected by a more exact definition in 1807. In the "History of Woman Suffrage" it is asserted that women had voted in Massachusetts under the charter from 1691 to 1780 and under the Constitution from 1780 to 1785. However, this is mere conjecture. There were no further instances of women exercising the right of suffrage, during the early periods of our national history.

During the decade preceding the Civil War there was considerable agitation for woman suffrage, but the preponderance of the slavery issue kept it in the background. The only tangible result of this early agitation for woman suffrage appears to have been the action of Kansas in 1861, following the earlier example of Kentucky, granting school suffrage to women. When the Negro became a citizen and later an elector—both by amendments to the Federal Constitution—the women agitators for suffrage became impatient in their demands for the ballot. Some presumed to vote, claiming that privilege under the 14th amendment. A Mrs. Ricker voted without protest in New Hampshire in 1872. When Susan B. Anthony insisted on voting the same year, she was fined $100—which was never paid. Finally, in 1875, a decision was handed down by the Supreme Court of the United States asserting that the amendment had not contemplated women voting and that the regulation of the elective franchise was entirely within the province of the various States. This stopped women from voting a second time.

Meanwhile, the leaders of the movement were not idle. In 1869 what was known as the 16th amendment was urged upon Congress: The right of suffrage in the United States shall be based on citizenship and shall be regulated by Congress; and all citizens of the United States, whether native or naturlized, shall enjoy this right equally without any distinction of discrimination whatever founded on sex. This proposed amendment had two significant features besides its main intent: it would have invalidated at one stroke the declaration of intent tests in a number of States and it would have wrought a suffrage revolution by vesting in Congress the regulation of suffrage instead of leaving this function to the several Commonwealths—which had been the custom for colonial day. The first vote obtained on the proposed amendment was in 1887, when the Senate refused to submit it to the States for ratification by a vote of 34 to 16. To have been constitutionally effective, this vote would have had to have been the reverse of what it was. Eleven favorable committee reports have been had on the proposition: Five from the Senate and six from the House—the first in 1871, the last in 1893. Since the latter date attention has been directed principally to obtaining favorable action on the part of the States, through woman-suffrage amendments to the Commonwealth constitutions. However, the insistent agitation was bearing some fruit: school suffrage was being extended to women quite generally, and by the opening of the World War 26 States had made such a concession to women, while 9 had conferred either municipal or bond-voting suffrage.

The Territory of Wyoming was the first Commonwealth to grant full suffrage to women. This was done in 1869, while the Territory was not erected into a State until 20 years later. Yet even in 1889 the pioneer State stood alone. There seems to be some doubt as to the facts about the case of Wyoming. The action on 1869 appears to have been treated as a joke. There was no political significance in the measure. However, when the Territory was admitted as a State the opposition to woman suffrage had well-nigh ceased. In 1893 Colorado adopted an amendment to her constitution extending suffrage to women. The majority for the amendment was 6,347; a similar measure lost in 1877 by 5,844. Again it is difficult to get at the facts. Men outnumbered women in the Centennial State by 49,761. However, the measure seems to have been largely the result of the panicky and chaotic condition prevailing there then, and a sort of byproduct of populism. Idaho and Utah extended suffrage to women in 1896. The later Commonwealth thus returning to its territorial regulation, which had been annulled by the Federal Government because of the prevalance of polygamy. A woman critic attributed the adoption of woman suffrage in Wyoming to a political trick, in Colorado to populism, and in Utah to polygamy. Anyhow, there were no further concrete results for a number of years. In fact, since New York and Massachusetts had just rejected woman suffrage by overwhelming majorities there seemed little probability that other States would extend the franchise to women. In contrast to Colorado, in the latter State women outnum-

bered men by over 70,000. Frankly, it was an isolated western fad—ignored by the South and ridiculed by the North. For further advance of woman suffrage the time element was necessary.

Around 1910 the movement took on new life. A number of things contributed to this revival of interest in woman suffrage. Agitation, while persistent, was dignified; it took on more the nature of an educational propaganda. Also the novel suffrage venture of a few sparsely settled States had not caused either an upheaval of the social order or the moral downfall of woman. The rest of the Nation began to look with more respect on the whole question of woman suffrage. Other States began to adopt like amendments enfranchising women. In 1910 Washington gave woman the ballot, in 1911 California extended suffrage to women, and in 1912 Oregon did likewise, thus uniting the Pacific coast in the movement. The same year Arizona and Kansas granted suffrage to women. While the movement had reached beyond the West of high altitudes, it was still confined to the great West, where the States were not adverse to trying experiments. The conservative North and South were content to remain on the sidelines. No ordinary course of events would have caused even the North to adopt woman suffrage by a mass movement, much less the ultraconservative South.

Then came the World War. At that time nine States had granted women the elective franchise. When the United States entered the conflict two more had extended political suffrage to women—Nevada and Montana, both in 1914. However, at once woman suffrage became a war measure; the unselfish and heroic war work of the women of America and elsewhere was an unanswerable argument. Whatever woman wanted she should have as a fitting reward for her patriotism. As Mrs. Medill McCormick put it: "We have sacrificed as you have in its defense." Events moved rapidly. The greatest suffrage victory came in New York in 1917. As recently as in 1915, woman suffrage had been lost in that State by an adverse majority of over 185,000. Two years later the women framed a monster petition with over a million signatures of women asking for the ballot and the suffrage amendment carried that year by over 100,000 votes. The advocates of woman suffrage were greatly encouraged and the movement gained momentum. The next year Michigan, South Dakota, and Oklahoma enfranchised women. Similar amendments were submitted in five other States; but, the amending process was too dilatory to suit aroused woman suffrage sentiment and more speedy methods were adopted. The unique plan was devised to enfranchise women by mere legislative action, allowing them to vote in elections for "nonconstitutional offices," such as electors for President and sometimes Members of Congress. Illinois had adopted this expedient in 1913. During the year 1917 Michigan, Nebraska, North Dakota, and Rhode Island enacted similar legislation. Two years later, Tennessee, Missouri, Iowa, Minnesota, Wisconsin, Indiana, Ohio, and Maine did likewise; while Arkansas in 1917 and Texas in 1918 permitted women to vote at primaries only. Therefore, at the close of hostilities women had acquired political suffrage in some form in 29 States—15 by amendments to the Commonwealth constitutions and 14 by legislative enactment.

As great as was this victory for woman suffrage, an even more sweeping one was on the way.

Meanwhile the Anthony amendment to the U.S. Constitution had been urged upon Congress. President Wilson endorsed it as a war measure and brought his influence to bear upon the members of his party in Congress. While he had been uniformly successful in having his way with Congress, the proposed amendment failed of the necessary two-thirds majority in the Senate—though it had passed the House by a vote of 274 to 136, January 10, 1918. The succeeding Congress, while less obedient to the wishes of the President, took up and pressed forward the proposed amendment with such vigor that on June 5, 1919, it was passed by both Houses with the requisite majorities and submitted to the States for ratification (McCulloch, supra, pp. 109–116).

By September of 1920 a sufficient number of States had ratified for the amendment to become effective.

So what do we have? A Constitution which, since 1787, its inception, has given the control over voting qualifications to the States. This control has been twice abridged, once after the Civil War, in favor of the Negro, once after the World War, in favor of women. It took two wars and sweeping movements to accomplish these changes, and then they were accomplished by amendment to the Constitution. After the 15th amendment, the 17th amendment reaffirmed the States' rights to control over voting qualifications.

These rights are unchanged in the Constitution today; article I, section 2, stands as an effective and absolute bar to any attempts by the Congress or the executive branch of our Federal Government to enact laws establishing, modifying, or in any manner affecting the qualifications of electors, except to prohibit the States from discriminating on the basis of race, color, previous condition of servitude, or sex. Congress has no power or authority or right to pass laws abolishing or altering State poll tax laws; neither does it have the authority to enact legislation like that pending before us now which would bypass State administrative machinery in elective franchise matters. I say again, Mr. President, that the pending "right to vote" bill is unconstitutional because it infringes upon the rights of the States to fix the qualifications of its voters; as presently drafted, it would permit a Federal judge, at the instigation of the U.S. Attorney General, to usurp the functions of State election officers to pass upon the qualifications of voters, without regard to administrative review procedures and other safeguards established by the State to prevent abuses and arbitrary actions by its election officers.

As I have demonstrated in remarks that I made earlier in the course of this debate, it would be possible under this pending right-to-vote bill for the Attorney General of the United States, acting on behalf of or in the name of some disgruntled citizen who had been denied registration or denied the right to vote because he lacked the requisite qualifications as established by the State legislature—a denial not based on color or race—to enjoin the State election officer and by compulsion of Federal law—the armed fist of the United States, if you please—this voter who might be otherwise unqualified under State law, would be enabled to cast his ballot. An action for injunction brought within a few days of an election could be tried on affidavit of the aggrieved party, and without a hearing under existing Federal court rules; by the time the temporary restraining order or temporary injunction expired, the question would be moot because the election would be over, and the case would never be decided on its merits. I say, Mr. President, that procedure of this kind is an outright and flagrant invasion of our States' constitutional rights to establish the qualifications of their voters, and this Congress should never give its sanction and blessing to a diabolical scheme of this kind.

Mr. President, I have completed the first of three phases of my presentation of the suffrage problem—that concerned with the U.S. Constitution. The second phase, which I now approach, is concerned with the original State constitutional provisions and their changes.

Should Senators ask "Why go into all the State constitutional regulations to prove the unconstitutionality of the pending right-to-vote bill?"—the answer is that a full discussion and study of the origin and development of the constitutional provisions of the 50 States affecting the elective franchise is essential to a complete understanding of the question before the Senate today. Whenever the Federal Government undertakes to invade an entirely new field—whenever the legislative branch of the Federal Government proceeds to the consideration of a bill that on its face will infringe upon rights specifically guaranteed to the States in the Constitution—then there can be no doubt that a full and thorough discussion of each and every facet of the problem is not only in order but is obligatory upon the Senate. It is in the discharge of the solemn duty I assumed when I took the oath of United States Senator to uphold the Constitution of the United States of America that I stand before the Senate today to warn Senators, and Congressmen, and the American people at large, that the pending bill gives to the Federal Government, acting through the U.S. Attorney General and through the Federal judiciary system, the power to alter, to modify, to abolish, if you please, State-established qualifications for voters for reasons other than discrimination based upon race, color, sex, or previous condition of servitude.

To get the full impact of the legislation upon the States' constitutional mandate to establish the qualifications of electors, it is necessary for us to go back to the early days of our history and trace the development of the States' election machinery. In this connection, Mr. President, I quote from Porter's excellent work on this subject, entitled "History of Suffrage in the United States," page 14.

Mr. KUCHEL. Mr. President, will the Senator from Louisiana yield with the usual guarantees?

Mr. ELLENDER. I yield, provided I do not lose the floor.

Mr. KUCHEL. I have listened to the able Senator conclude phase 1 of a remarkable presentation. I am wondering if it would be possible for us to look forward to being enriched by phase 2 tomorrow, rather than this evening, if

our friend might, with his usual charity of spirit, indicate his own desire in the matter.

Mr. ELLENDER. I have no intention to punish my good friend, the Senator from California.

Mr. KUCHEL. To the contrary; I must say that I have listened with interest to the Senator from Louisiana.

Mr. ELLENDER. The Senator from California has been very attentive to what I have had to say.

Mr. KUCHEL. Indeed I have.

Mr. ELLENDER. I did not see him go to sleep.

Mr. President, I have made a long study of this question. It has not developed in the last 2, 3, or 4 months. As I said earlier in my remarks, this subject has been before Congress almost every year since I became a Member of Congress. There seems to be no end to it. Little by little, the rights of the sovereign States are being nibbled away.

I was in hopes of making this presentation to the Senate, so that they could look at it, so that they could read it, and see for themselves that there is no constitutional basis for the bill, particularly title VI, which I have asked to be stricken.

Mr. President, I see in the Press Gallery a few sleepy-eyed reporters who want to go home. Inasmuch as I have completed the first phase of my presentation to the Senate, I hope to start the second phase tomorrow.

RECESS UNTIL 10 A.M.

Mr. ELLENDER. Mr. President, under the order previously entered, I move that the Senate stand in recess until 10 o'clock this morning.

The motion was agreed to; and (at 12 o'clock midnight) the Senate took a recess, under the order previously entered, until Wednesday, April 6, 1960, at 10 o'clock a.m.

NOMINATIONS

Executive nominations received by the Senate April 5, 1960:

PUBLIC HEALTH SERVICE

The following candidates for personnel action in the Regular Corps of the Public Health Service subject to qualifications therefor as provided by laws and regulations:

I. FOR APPOINTMENT

To be senior assistant surgeons

Harry P. Anastopulos	Leon I. Goldberg
Robert P. Balderson	Betty E. Hathaway
Richard F. Barbee	Lowell R. Hughes
Robert N. Barnes	Robert A. Jordan
Frank C. Bigler	Karl M. Johnson
Aaron B. Brill	Marion E. Kintner
Ray A. Brinker	Charles E. Koch, Jr.
Willard L. Brown	Frederick L. Lang
Willard R. Brown	William C. Larsen
Gerald E. Caplan	Dale Lindholm
Leo J. Castiglioni	Robert P. Locey
Ruth Coffin	William R. Martin
John F. Dotter	Samuel Milham, Jr.
Arvo B. Ederma	Barry Miller
Richard W. Emmons	John P. Nasou
Earl R. Feringa	Alvin H. Novack
James P. Fields	John A. Oates, Jr.
Paul J. Fry, Jr.	William M. O'Brien
George G. Glenner	Gerald H. Payne
John E. Glennon	Paul G. Pechous
Darwin J. Prockop	Michio Takahashi
H. McDonald Rimple	John B. Titmarsh, Jr.
Marcus N. Rogers	Fred E. Tosh
Saul W. Rosen	Robert C. Vander Wagen
William B. Sheldon	Cecil C. Vaughn, Jr.
Richard A. Smith	Richard D. Wasson
Roland W. Sonntag	Charles L. Whetstone
Richard A. Stamm	Harold W. Wylie, Jr.
Barron H. Stillman	

To be assistant surgeons

William J. Atkinson	George T. Harding, Jr.
John R. Baugh	Otto L. Loehden
Frederick V. C. Feather-stone	Robert J. Warren

To be senior assistant dental surgeons

George L. Crocker	Richard B. McDowell
Raymond D. Haslam	James J. McMahon
Phillip K. Humphreys	Joseph P. Moffa, Jr.
Donald P. Jelinek	James M. Power
Karl K. Kreth	Gunnar E. Sydow

To be assistant dental surgeons

Robert W. Baumann	George R. McGuire
Lawrence I. Carnes	John R. Stolpe

To be senior assistant sanitary engineers

John M. Rademacher
Leo A. St. Michel

To be assistant sanitary engineers

Eugene J. Donovan, Jr.	Edwin L. Johnson
	Jack W. Keeley
John A. Eckert	Donald S. Licking
Robert L. Elder	Paul J. Traina

To be junior assistant sanitary engineers

R. Frank Grossman
Alfred W. Hoadley

To be senior assistant pharmacists

Lowell F. Miller
Billy G. Wells

To be assistant pharmacists

Robert P. Chandler	Samuel Merrill
James R. Gates	James E. Norris
Jacob H. Hendershot	Joseph F. Toomey
Luis Hernandez	John R. Wiseman
Philip R. Hugill	

To be junior assistant pharmacists

Ray D. Crossley II	Joe M. Holman
Jerome A. Halperin	Harley A. Mills

To be senior assistant scientist

Jay D. Mann

To be assistant scientists

John C. Feeley III
Sheldon D. Murphy

To be senior assistant veterinary officer

Robert K. Sikes

To be assistant veterinary officers

Garland D. Lindsey
Roger E. Wilsnack

To be senior assistant nurse officers

Lawrence A. Levine
Marjory E. Lewis

CONFIRMATION

Executive nomination confirmed by the Senate April 5, 1960:

U.S. TARIFF COMMISSION

Glenn W. Sutton, of Georgia, to be a member of the U.S. Tariff Commission, for a term expiring June 1, 1966. Reappointment.

WITHDRAWAL

Executive nomination withdrawn from the Senate April 5, 1960:

POSTMASTER

Robert C. Miller to be postmaster at Pontiac, in the State of Michigan, which was sent to the Senate on January 11, 1960.

HOUSE OF REPRESENTATIVES

TUESDAY, APRIL 5, 1960

The House met at 12 o'clock noon.

The Chaplain, Rev. Bernard Braskamp, D.D., offered the following prayer:

John 8: 31–32: *If ye continue in my word, then are ye my disciples indeed and ye shall know the truth and the truth shall make you free.*

Eternal God, our heavenly Father, united in a fellowship of common needs, we are beseeching Thee earnestly to answer our loftiest aspirations with the divine inspiration of Thy holy spirit.

May that inspiration endow us with a clearer insight and wiser understanding of our most difficult problems and renew within us a faith that constrains us to be faithful and fruitful in Christlike character and service.

Inspire us to live humbly and reverently, trusting that the future will be as bright as the promises of God and that if any man will do the will of God he shall know the truth and the truth shall make him free.

Hear us in His name who is the way, the truth, and the life. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

PUBLIC BUILDING ALTERATION AND REPAIR PROJECTS

The SPEAKER laid before the House the following communication, which was read and referred to the Committee on Appropriations:

APRIL 4, 1960.

The Honorable SAM RAYBURN,
Speaker of the House,
The Capitol, Washington, D.C.

MY DEAR MR. SPEAKER: Pursuant to the provisions of section 7(a) of the Public Buildings Act of 1959, the Committee on Public Works of the House of Representatives approved on March 31, 1960, a prospectus for each of the following public building alteration and repair projects which were transmitted to this committee from the General Services Administration:

LOCATION AND TYPE

Alabama, Birmingham—PO CT.
California, San Francisco—Appraiser's Building.
Delaware, Wilmington—PO CT.
District of Columbia—Agriculture, Administration Building.
District of Columbia—Agriculture, annex.
District of Columbia—Agriculture, South Building.
District of Columbia—GSA Building.
District of Columbia—Treasury annex.
District of Columbia—Weather Bureau.
Florida, St. Petersburg Beach—Don-Ce-Sar Office Building.
Illinois, Chicago—Main Post Office.
Iowa, Des Moines—Federal Building.
Louisiana, New Orleans—Customhouse.
Louisiana, New Orleans—FOB.
Maryland, Bethesda—NIH.
Maryland, Suitland—FOB No. 4.
Massachusetts, Boston—Customhouse.
Missouri, St. Louis—CT CU.
New York, Brooklyn—PO CT.
New York, Foley Square—CT.
Ohio, Toledo—CT CU.

Pennsylvania, Philadelphia—128 North Broad.
Pennsylvania, Philadelphia—5000 Wissahickon Avenue.
Virginia, Arlington—FOB No. 2.
Virginia, Arlington—Pentagon Building.
Washington, Seattle—FOB.
Wisconsin, Milwaukee—PO CT.
Illinois, Chicago—Railroad Retirement Board.

The committee also approved on the same date a revised prospectus for a Federal building project at Bismarck, N. Dak.

Sincerely yours,

CHARLES A. BUCKLEY,
Member of Congress, Chairman, Committee on Public Works.

THE DISASTROUS FLOOD DAMAGE IN THE UPPER MISSISSIPPI VALLEY

Mr. SMITH of Mississippi. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. SMITH of Mississippi. Mr. Speaker, the upper Mississippi Valley is already feeling the effect of a disastrous flood. The possibility looms that flood damage will become greater if there are new storms at any time within the next few weeks.

The vast property loss which is already being felt is the most convincing answer we have to the folly of the "no new starts" policy of the present administration in the field of flood control. Our water problem simply will not stand still; we must continually meet the challenge of proper control of flood threats and conservation of the water supply that is so desperately needed for so many useful purposes.

I hope that the House Appropriations Committee will continue the policy adopted last year of ignoring the Bureau of the Budget edicts in respect to new projects. We cannot afford to continue to accept this policy of false economy.

COMMITTEE ON BANKING AND CURRENCY

Mr. ALBERT. Mr. Speaker, I ask unanimous consent that Subcommittee No. 2 of the Committee on Banking and Currency may sit today during general debate.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

GEORGE HENRY OBERLE, JR.

Mr. LANE. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. LANE. Mr. Speaker, the newspaperboy represents all that is best in American youth. The lad who delivers the news is a familiar figure in the neighborhood. No matter how hot or cold or stormy the weather may be, he never fails us. We can count on finding the copy of our favorite newspaper in the back hallway right on schedule.

In addition to his schoolwork, he is learning the virtues of initiative and responsibility on his own.

As we look out the window and watch him covering his route, we feel a glow of admiration for this plucky little businessman. Although we may not know whether he wants to become a teacher, doctor, scientist, or even President, we can be sure that he is working and saving to educate himself for a worthy career.

In the biographies of many American leaders we find this wholesome beginning of success stories that read: "Newspaperboy makes good."

This enterprising spirit of youth renews itself in every generation, giving us confidence in their future and in the future of our Nation.

George Henry Oberle, Jr., is a newspaperboy with vision and determination. He is 14 years of age, resides at 44 Webster Street, Revere, Mass., and is an honor student at Garfield Junior High. Although his parents died when he was a youngster, he found a loving home with his brother and sister-in-law, who have become "mom" and "dad" to him.

In the Newspaperboys Trip to Australia Contest, he placed third, but that did not discourage him. Responding to challenge, he decided to work harder and do better next time. He entered the Boston Record-American-Sunday Advertiser Newspaperboys Contest, open to boys between the ages of 12 to 18. It was based on a point system, where an important factor was the greatest total sales increases between November 8, 1959, and March 14, 1960.

George worked overtime because he had his heart set on winning. As a result of his perseverance, he came in first, and has been honored with the title of "Junior Diplomat of Goodwill."

Easter Sunday is a joyous day for all, but for George it will be one of the happiest and most thrilling of his whole life. He will be the special guest on the newspaperboys radio show which will be broadcast over WEZE at 9:30 a.m. Later in the day he will fly on a Qantas jet to London, England, bearing letters of greeting from famous Americans to famous Englishmen.

That is the beginning of an exciting itinerary, climaxed on April 22, when he will attend a performance of "The Merchant of Venice" at the Shakespeare Memorial Theatre. Then he will cut a record with the stars for the newspaperboys radio show, and present honorary membership awards to Peter Hall, producer of "The Merchant of Venice," and to his wife, the beautiful moving picture actress, Leslie Caron.

The city of Revere is proud of its young champion.

Mayor Raymond E. Carey will proclaim a George Oberle Day and will arrange a program to express the community's appreciation of the "Junior Diplomat of Goodwill."

In winning this honor, George has helped his school. For part of his prize award is a Calculo Analog computer from the science department of Jordan Marsh Co., which he will present to Garfield Junior High School.

Congratulations to George Oberle, Jr., who is a praiseworthy example of all the many qualities that characterize the American newspaperboy.

PRIVATE CALENDAR

The SPEAKER. This is Private Calendar day. The Clerk will call the first individual bill on the calendar.

PATRICIA CROUSE BREDEE

The Clerk called the bill (S. 231) for the relief of Patricia Crouse Bredee.

Mr. GROSS. Mr. Speaker, I ask unanimous consent that this bill may be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Iowa?

There was no objection.

NORTH AMERICAN PHILIPS CO., INC.

The Clerk called the resolution (H. Res. 451) providing for sending the bill, H.R. 7901, with accompanying papers, to the Court of Claims.

There being no objection, the Clerk read the resolution, as follows:

Resolved, That the bill (H.R. 7901) entitled "A bill for the relief of North American Philips Company, Incorporated, 100 East Forty-second Street, New York 17, New York," together with all accompanying papers, is hereby referred to the Court of Claims pursuant to sections 1492 and 2509 of title 28, United States Code; and the court shall proceed expeditiously with the same and report to the House, at the earliest practicable date, such findings of fact, including facts relating to delay or laches, facts bearing upon the question whether the bar of any statute of limitation should be removed, or facts claimed to excuse the claimant for not having resorted to any established legal remedy, and conclusions based on such facts as shall be sufficient to inform Congress whether the demand is a legal or equitable claim or a gratuity, and the amount, if any, legally or equitably due from the United States to the claimant.

The resolution was agreed to.

A motion to reconsider was laid on the table.

BETTY KEENAN

The Clerk called the bill (H.R. 5033) for the relief of Betty Keenan.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Betty Keenan, of 311 Oneida Street, Pittsburgh, Pennsylvania, the sum of $499.06 in full settlement of her claim against the United States for a refund of the amounts deducted from her salary as a Federal employee for retirement fund purposes in the period from December 14, 1942, to January 31, 1948: *Provided,* That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or

received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

PLACID J. PECORARO ET AL.

The Clerk called the bill (H.R. 6121) for the relief of Placid J. Pecoraro, Gabrielle Pecoraro, and their minor child, Joseph Pecoraro.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Gabrielle Pecoraro, the sum of $25,000, to Placid Pecoraro the sum of $10,000, and to Placid and Gabrielle Pecoraro for the benefit of their minor child, Joseph Pecoraro, all of Rochester, New York, the sum of $100,000. Payment of such sums shall be in full settlement of all claims arising out of the permanent personal injuries sustained by Gabrielle and Joseph Pecoraro at the time of the birth of Joseph Pecoraro on September 18, 1948, at the United States Army Hospital at Paris, France, as the result of improper handling of the delivery, and the medical and other expenses thereby incurred by Placid Pecoraro: *Provided,* That no part of either of the sums appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with the claim settled by the payment of such sum, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

With the following committee amendment:

Strike out all after the enacting clause and insert: "That, notwithstanding laches or any statute of limitations, jurisdiction is hereby conferred upon any United States district court to hear, determine, and render judgment in accordance with the procedures of the Federal tort claims provisions of title 28 of the United States Code, upon the claims of Placid J. and Gabrielle Pecoraro and of their minor child, Joseph Pecoraro, all of Rochester, New York, against the United States for expenses, losses, damages, or injuries alleged to have resulted from the improper handling of the delivery and improper medical care at the time of the birth of the said Joseph Pecoraro on September 18, 1948. The action authorized by this Act must be commenced within one year of the date of enactment of this Act."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MAY HOURANI

The Clerk called the bill (H.R. 2007) for the relief of May Hourani.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, May Hourani shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper quota-control officer to deduct one number from the appropriate quota for the first year that such quota is available.

With the following committee amendment:

On page 1, line 10, after the words "from the" strike out the remainder of the bill and insert in lieu thereof the following: "Number of visas authorized to be issued pursuant to the provisions of section 15 of the Act of September 11, 1957 (71 Stat. 643)."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JESUS CRUZ-FIGUEROA

The Clerk called the bill (H.R. 2645) for the relief of Jesus Cruz-Figueroa.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provision of section 212(a)(22) of the Immigration and Nationality Act, Jesus Cruz-Figueroa may be issued a visa and admitted to the United States for permanent residence if he is found to be otherwise admissible under the provisions of that Act: *Provided,* That this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the enactment of this Act.

With the following committee amendment:

Page 1, line 11, insert: *"Provided further,* That nothing in this Act shall be construed to waive the provisions of section 314 of the Immigration and Nationality Act."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

LEANDRO PASTOR, JR., AND PEDRO PASTOR

The Clerk called the bill (H.R. 1402) for the relief of Leandro Pastor, Jr., and Pedro Pastor.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of sections 101(a)(27)(A) and 205 of the Immigration and Nationality Act, Leandro Pastor, Junior, and Pedro Pastor shall be held and considered to be the natural-born alien minor children of Leandro Pastor, a citizen of the United States.

With the following committee amendment:

On page 1, at the end of the bill, add a new section 2 to read as follows:

"SEC. 2. Notwithstanding the provision of section 212(a)(19) of the Immigration and Nationality Act, Pedro Pastor may be issued a visa and admitted to the United States for permanent residence if he is found to be otherwise admissible under the provisions of that Act: *Provided,* That this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the enactment of this Act."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JOHAN KAREL CHRISTOPH SCHLICTER

The Clerk called the bill (H.R. 1463) for the relief of Johan Karel Christoph Schlicter.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Johan Karel Christoph Schlicter shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper quota-control officer to deduct one number from the appropriate quota for the first year that such quota is available.

With the following committee amendment:

Page 1, line 4, strike out "Schlicter" and insert "Schlichter".

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill for the relief of Johan Karel Christoph Schlichter."

A motion to reconsider was laid on the table.

DAVID TAO CHUNG WANG

The Clerk called the bill (H.R. 1486) for the relief of David Tao Chung Wang.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, David Tao Chung Wang shall be held and considered to have been lawfully admitted to the United States for

permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper quota-control officer to deduct one number from the appropriate quota for the first year that such quota is available.

With the following committee amendment:

On page 1, line 7, after the words "visa fee" change the period to a colon and insert the following: *"Provided,* That a suitable and proper bond or undertaking approved by the Attorney General, be deposited as prescribed by section 213 of the said Act."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

DAVID JOHN MARIA ET AL.

The Clerk called the bill (H.R. 8888) for the relief of David John Maria, Angela Maria, and John Elias Maria.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of sections 101(a)(27)(A) and 205 of the Immigration and Nationality Act, David John Maria, Angela Maria, and John Elias Maria, shall be held and considered to be the natural-born alien minor children of Larry Keighley, a citizen of the United States, and the provisions of section 212(a)(7) and (15) of the said Act shall be held to be inapplicable in this case: *Provided,* That a suitable and proper bond or undertaking, approved by the Attorney General, be deposited as prescribed by section 213 of the said Act.

With the following committee amendments:

On page 1, lines 4 and 5, strike out the name "David John Maria,".

On page 1, line 5, strike out ", and John Elias Maria,".

On page 1, line 6, strike out "children" and substitute "child".

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "For the relief of Angela Maria."

A motion to reconsider was laid on the table.

ROMEO GASPARINI

The Clerk called the bill (H.R. 8798) for the relief of Romeo Gasparini.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of sections 101(a)(27)(A) and 205 of the Immigration and Nationality Act, the minor child, Romeo Gasparini, shall be held and considered to be the natural born alien child of Mr. and Mrs. Romy Gasparini, citizens of the United States.

With the following committee amendment:

At the end of the bill, strike out the period and add the following: ": *Provided,* That the natural mother of the beneficiary shall not, by virtue of such parentage, be accorded any right, privilege, or status under the Immigration and Nationality Act."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

DEPORTATION OF CERTAIN ALIENS

The Clerk called the joint resolution (H.J. Res. 638) relating to deportation of certain aliens.

There being no objection, the Clerk read the joint resolution, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Attorney General is authorized and directed to cancel any outstanding orders and warrants of deportation, warrants of arrest, and bonds, which may have issued in the cases of Albert Stummer, Imre Seykeli, Margareta Seykeli, Rena (Regine) Carmi, Marie Haladjian, Anastasia Stamathioudakis, Vahe Proudian, and Alice Proudian. From and after the date of the enactment of this Act, the said persons shall not again be subject to deportation by reason of the same facts upon which such deportation proceedings were commenced or any such warrants and orders have issued.

With the following committee amendments.

On page 1, line 8, strike out the word "and".

On page 1, line 8, after the name "Alice Proudian" change the period to a comma and add the following: "Rosa Povarchik De Rosenberg, Hannah Jane Jackson, George N. Panagiotou, Berta Rakovsky de Spikilis, and Aida Rosen."

The committee amendments were agreed to.

The joint resolution was ordered to be engrossed and read a third time, was real the third time, and passed, and a motion to reconsider was laid on the table.

BIAGIO D'AGATA

The Clerk called the bill (H.R. 1542) for the relief of Biagio D'Agata.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provision of section 212(a) of the Immigration and Nationality Act, Biagio D'Agata may be admitted to the United States for permanent residence if he is found to be otherwise admissible under the provisions of that Act.

With the following committee amendments:

On page 1, line 3, after "section 212(a)" insert "(9)".

On page 1, line 5, after the words "may be" insert "issued a visa and".

On page 1, line 7, after the word "Act" change the period to a colon and add the following: *"Provided,* That this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the enactment of this Act."

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ANGELA D'AGATA NICOLOSI

The Clerk called the roll (H.R. 1543) for the relief of Angela D'Agata Nicolosi.

Mr. HEMPHILL. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

IDA MAGYAR

The Clerk called the bill (H.R. 3253) for the relief of Ida Magyar.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Ida Magyar shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this act, upon payment of the required visa fee: *Provided,* That a suitable and proper bond or undertaking, approved by the Attorney General, be deposited as prescribed by section 213 of the Immigration and Nationality Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RELIGIOSA LUIGIA FRIZZO AND OTHERS

The Clerk called the bill (H.R. 3805) for the relief of Religiosa Luigia Frizzo, Religiosa Vittoria Garzoni, Religiosa Maria Ramus, Religiosa Ines Ferrario, and Religiosa Roberta Ciccone.

Mr. AVERY. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Kansas?

There was no objection.

JAN P. WILCZYNSKI

The Clerk called the bill (H.R. 3827) for the relief of Jan P. Wilczynski.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of section 316 of the Immigration and Nationality Act relating to required periods of residence and physical presence within the United States, Jan P. Wilczynski may be naturalized at any time after the date of the enactment of this

Act if he is otherwise eligible for naturalization under the Immigration and Nationality Act and if he applies therefor within the one-year period beginning on the date of the enactment of this Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JOSETTE A. M. STANTON

The Clerk called the bill (H.R. 4763) for the relief of Josette A. M. Stanton.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of section 301(b) of the Immigration and Nationality Act, the continuous physical presence of Josette A. M. Stanton in the United States during the period beginning July 18, 1940, and ending October 20, 1947, both dates inclusive, shall be held and considered to be continuous physical presence in the United States by her after attaining the age of fourteen years.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following: "That, in the administration of section 301 (b) of the Immigration and Nationality Act and section 16 of the Act of September 11, 1957, Josette A. M. Stanton shall be held and considered to have complied with the provisions thereof if she establishes residence in the United States prior to attaining the age of twenty-five years."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GIUSEPPE ANTONIO TURCHI

The Clerk called the bill (H.R. 4834) for the relief of Giuseppe Antonio Turchi.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Giuseppe Antonio Turchi shall be deemed to be a nonquota immigrant and shall be admitted to the United States for permanent residence if he is otherwise admissible under the provisions of that Act.

With the following committee amendment:

On page 1, line 5, strike out the words "shall be" and insert in lieu thereof the following: "may be issued a visa and".

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

LEGAL GUARDIAN OF EDWARD PETER CALLAS, A MINOR

The Clerk called the bill (H.R. 1519) for the relief of the legal guardian of Edgar Peter Callas, a minor.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of $50,000 to the legal guardian of Edward Peter Callas, a minor, of Brooklyn, New York, in full settlement of all claims against the United States. Such sum represents compensation for the personal injury, and all expenses incident thereto, sustained as a result of an accident involving the explosion of a round of ordnance on the beach at Kwajalein, Marshall Islands, on February 20, 1955, such explosives being left on the beach by the United States Armed Forces: *Provided,* That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

With the following committee amendment:

Page 1, line 5, strike "$50,000" and insert "$20,000".

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

OUR LADY OF THE LAKE CHURCH

The Clerk called the bill (H.R. 5150) for the relief of Our Lady of the Lake Church.

Mr. AVERY. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Kansas?

There was no objection.

MRS. CLARA YOUNG

The Clerk called the bill (H.R. 6400) for the relief of Mrs. Clara Young.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Mrs. Clara Young, Bronx, New York, the sum of $500. The payment of such sum shall be in full settlement of all claims of the said Mrs. Clara Young against the United States for refund of the amount of a departure bond deposited by her on behalf of the alien Hermina Vidor. Such bond was declared breached, and the amount thereof forfeited, because of the failure of such alien to depart from the United States on the date prescribed for her departure: *Provided,* That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RICHARD SCHOENFELDER AND LIDWINA S. WAGNER

The Clerk called the bill (H.R. 8457) for the relief of Richard Schoenfelder and Lidwina S. Wagner.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the limitations contained in section 33 of the Trading With the Enemy Act, as amended (50 App. U.S.C. 33), with respect to the filing of claims and the institution of suits for the return of property or any interest therein pursuant to section 9 or 32 of such Act (50 App. U.S.C. 9 or 32), Richard Schoenfelder, a United States citizen, and Lidwina S. Wagner, a British national, both residing in Chile, may, within six months after the enactment of this Act, file a claim for the return of certain property, namely, their interests under the trust established by an agreement between Mathilde Bauer, late of the United States, and Fidelity Union Trust Company, Newark, New Jersey, trustee, under date of March 8, 1933, and supplemental amendatory agreements, the title to their interests having been acquired by the United States under the Trading With the Enemy Act by vesting order Numbered 12870 of the Office of Alien Property; and that claim shall be considered on its merits in accordance with the remaining provisions of that Act. If no such return is made within a period of sixty days after the filing of such claim, the said Richard Schoenfelder and Lidwina S. Wagner shall be entitled, within one year of the expiration of such period, to institute suit pursuant to section 9 of such Act (50 App. U.S.C. 9) for the return of such property.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MOCK FOOK LEONG

The Clerk called the bill (H.R. 9043) for the relief of Mock Fook Leong.

Mr. HEMPHILL. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

MRS. ICILE HELEN HINMAN

The Clerk called the bill (H.R. 9751) for the relief of Mrs. Icile Helen Hinman.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Mrs. Icile Helen Hinman, Arlington, Virginia, widow of Lloyd J. Hinman, shall be held and considered to be the widow of the said Lloyd J. Hinman within the meaning of sec-

tion 4(b) of the Civil Services Retirement Act of May 29, 1930, from and after the time of his retirement under such Act.

With the following committee amendments:

Page 1 line 3, following "That" insert: "notwithstanding the restriction on the use of the retirement fund imposed by the paragraph headed "Civil Service Retirement and Disability Fund" in section 101 of title I of the Act of August 28, 1958 (72 Stat. 1064),".

Page 1, line 6, strike "Services" and insert "Service".

Page 1, line 7, following "1930," insert "as amended,".

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

SECOND LIEUTENANT JAMES F. RICHIE

The Clerk called the bill (H.R. 10564) for the relief of 2d Lt. James F. Richie.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Second Lieutenant James F. Richie, O5405212, United States Army, the sum of $932.75, in full settlement of all claims against the United States for the loss sustained by the said Second Lieutenant James F. Richie as the result of damage to and destruction of his personal property in the warehouse of Greyvan Lines, Incorporated, Fayetteville, North Carolina, by a fire which occurred on August 23, 1959: *Provided,* That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, any contract to the contrary notwithstanding. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GRAND LODGE OF NORTH DAKOTA, MASONS

The Clerk called the bill (H.R. 8417) for the relief of Grand Lodge of North Dakota, Ancient Free and Accepted Masons.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Grand Lodge of North Dakota, Ancient Free and Accepted Masons, the sum of $1,155.26. The payment of such sum shall be in full settlement of all claims of such lodge against the United States for refund of customs duties which were assessed on Masonic jewels, consisting of insignia or emblems composed of metal and other material, imported from Canada and paid by such Grand Lodge of North Dakota, Ancient Free and Accepted Masons, on June 10 and 12, 1959. Such Masonic jewels, consisting of insignia or emblems composed of metal and other material, were denied free entry in spite of the fact that they were of the type granted duty-free status by paragraph 1773 of the Tariff Act of 1930: *Provided,* That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violat the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

With the following committee amendment:

Page 2, lines 7 and 8: Strike "in excess of 10 per centum thereof".

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

HEIRS OF FRANK L. WILHELM

The Clerk called the bill (H.R. 3122) directing the Secretary of the Interior to issue a homestead patent to the heirs of Frank L. Wilhelm.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized and directed to issue a patent conveying to the heirs of Frank L. Wilhelm, deceased, a fee simple title for the land and minerals included in homestead entry Cheyenne 043849, comprising lots 3, 4, section 7; lot 1, northeast quarter northwest quarter section 18; township 57 north, range 97 west, sixth principal meridian, Wyoming, on the basis of rights earned by compliance with the homestead laws effective January 17, 1929.

SEC. 2. Upon issuance of a patent pursuant to section 1 of this Act, the owners of such patent shall be substituted for the United States as lessor under oil and gas lease Cheyenne 067759 issued as of January 1, 1946, to Dorothy Atwood Fox, insofar as said lease covers land included in said patent, effective as of the date of approval of this Act.

SEC. 3. Nothing contained in section 1 or 2 of this Act shall prejudice determination by the Court of Claims, in accordance with the law in effect prior to enactment of this Act, of any claim of right by the heirs of Frank L. Wilhelm to have paid to them moneys which have heretofore accrued or been paid to the United States under oil and gas lease Cheyenne 067759, and said court is hereby authorized, notwithstanding lapse of time, to hear, determine, and render judgment in any such suit that may be brought within one year from the date of this Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JOHN E. AND MRS. CAROLINE ALMEIDA

The Clerk called the bill (H.R. 4428) for the relief of Staff Sergeant John E. and Mrs. Caroline Almeida.

Mr. VAN PELT. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. ROBERTS. Mr. Speaker, I ask unanimous consent that the further call of the Private Calendar be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

PATRICIA CROUSE BREDEE

Mr. WALTER. Mr. Speaker, I ask unanimous consent to return for immediate consideration to Calendar No. 377, the bill (S. 231) for the relief of Patricia Crouse Bredee.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the immigration and nationality laws, Patricia Crouse Bredee shall be held and considered to have resided in and to have been physically present in the United States for a period of five years after she had attained the age of sixteen years.

The bill was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider was laid on the table.

ANGELA D'AGATA NICOLOSI

Mr. HEMPHILL. Mr. Speaker, I ask unanimous consent to return for immediate consideration to Calendar No. 424, the bill (H.R. 1543) for the relief of Angela D'Agata Nicolosi.

The SPEAKER. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Angela D'Agata Nicolosi, who lost United States citizenship under the provisions of section 401(e) of the Nationality Act of 1940, may be naturalized by taking prior to one year after the effective date of this Act, before any court referred to in subsection (a) of section 310 of the Immigration and Nationality Act or before any diplomatic or consular officer of the United States abroad, the oaths prescribed by section 337 of the said Act. From and after naturalization under this Act, the said Angela D'Agata Nicolosi shall have the same citizenship status as that which existed immediately prior to its loss.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

SECOND SUPPLEMENTAL APPROPRIATION BILL, 1960

Mr. FLOOD. Mr. Speaker, I ask unanimous consent that the managers on the

part of the House have until midnight tonight to file a conference report on H.R. 10743, the second supplemental appropriation bill, 1960.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

U.S. MERCHANT VESSEL AND WATERFRONT SECURITY ACT OF 1960

Mr. WALTER. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. WALTER. Mr. Speaker, I have just introduced a bill providing that no individual who willfully fails or refuses to answer or falsely answers certain questions relating to Communist activities, when summoned to appear before certain Federal agencies, shall be employed on any merchant vessel of the United States or within certain waterfront facilities in the United States.

Mr. Speaker, in Parker against Lester, decided October 26, 1955, and in Graham against Richmond, decided November 5, 1959, the Ninth Circuit Court of Appeals and the Court of Appeals for the District of Columbia, respectively, following a series of decisions by the Supreme Court, for all practical purposes ruled invalid the entire security screening procedures administered by the U.S. Coast Guard. Prior to these decisions, under the merchant marine screening program which had been authorized by law in 1950, the U.S. Coast Guard had screened off over 1,800 seamen from merchant vessels. Since these Court decisions, over 300 of the seamen who had been screened off have procured seamen's documents. Just a day or so ago I noticed in the press an account to the effect that all of the seamen who have been screened off merchant vessels will now become eligible for seamen's papers. In other words, our entire seamen security program has been destroyed.

The bill which I have just introduced is a companion to the Federal Employee Communist Activities Testimony Act of 1960 which I have likewise introduced today. It follows the same general pattern and is based on similar legal principles.

I expect to press for early consideration and enactment of both of these measures.

The text of the bill follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "United States Merchant Vessel and Waterfront Security Act of 1960."

SEC. 2. The Subversive Activities Control Act of 1950 (64 Stat. 989) is amended by inserting, immediately preceding section 4 thereof, the following new section:

"EMPLOYMENT OF CERTAIN INDIVIDUALS AT WATERFRONT FACILITIES AND ABOARD MERCHANT VESSELS OF UNITED STATES

"SEC. 3B. (a) No individual who willfully fails or refuses to appear before any Federal agency, when subpenaed or ordered to appear, or to answer under oath before such Federal agency any question concerning—

"(1) the membership of such individual, or any other individual, in the Communist Party,

"(2) the activities of such individual, or any other individual, as a member of the Communist Party, or

"(3) the participation of such individual, or any other individual, in activities conducted by or under the direction of the Communist Party or any member thereof,

shall be employed in any capacity aboard any merchant vessel of the United States or within any waterfront facility in the United States. The prohibition against employment contained in the first sentence of this subsection shall also apply with respect to any individual who commits perjury in answering any question referred to in such first sentence.

"(b) The President of the United States shall institute such measures and issue such rules and regulations as he may deem necessary to carry out the provisions of this section and, for such purpose, he may utilize such departments, agencies, officers, and instrumentalities of the United States as he may deem appropriate.

"(c) As used in this section—

"(1) the term 'waterfront facility' means all piers, wharves, docks, and similar structures to which vessels may be secured, buildings on such structures or contiguous to such structures, and equipment and materials on such structures or in such buildings;

"(2) the term "United States,' when used in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States;

"(3) the term 'Communist Party' means the Communist Party of the United States, or any successors of such party regardless of the assumed name, whose object or purpose is to overthrow the Government of the United States, or the government of any State, District, Commonwealth, or possession thereof, or the government of any political subdivision therein by force and violence, and includes subsidiary organizations of such party; and

"(4) the term 'Federal agency' means any department, independent establishment, or other agency or instrumentality of the executive branch of the Government of the United States, and any congressional committee or subcommittee."

STABILIZING COTTON PRICE SUPPORT FOR THE 1961 CROP

Mr. SMITH of Mississippi. Mr. Speaker, I ask unanimous consent that the gentleman from Alabama [Mr. JONES] may extend his remarks at this point in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. JONES of Alabama. Mr. Speaker, today I have introduced in the House a bill to stabilize cotton price support for the 1961 crop.

Two years ago, we were faced with the possibility that Secretary Benson would lower the national cotton allotment from over 17 million acres in 1958 to about 14 million acres for 1959. To avoid this situation, the Congress passed the Agricultural Act of 1958, fixing the minimum level of the national cotton allotted acreage for any year at 16.3 million acres. In the same act were price support provisions considered necessary to satisfy the many cotton industry groups and producing areas. The time is now approaching when some of these provisions will take effect with respect to the 1961 crop. As I understand them, it is clear that these provisions of the 1958 act authorize reductions in the price of cotton far beyond that which farmers can reasonably be expected to absorb. Furthermore, the allotment acreage for 1961 may well be reduced more than a million acres from 1960. If so, this would be the lowest cotton allotment in the 27-year history of the crop control programs.

Price support has been reduced from 90 percent of parity in 1955 to 75 percent of parity for 1960 crop choice A cotton. Present law would let the Secretary next year set price support for 1961 cotton at as little as 70 percent of parity and would require him to shift the price support base from middling seven-eighths-inch cotton to average of the crop cotton. Dropping the support price to 70 percent would mean a reduction of $9 or $10 a bale for cotton, and changing the middling base would mean a further reduction to farmers of $4 or $5 a bale. And this is not all; in 1962 the Secretary could lower support to 65 percent of parity.

Per acre yields of cotton have moved up sharply in recent years and we are now producing a bale an acre on land formerly yielding 20 pounds or less. But the cost of producing a crop has even run ahead of this progress in production methods, and the cost spiral continues upward. We cannot permit the provisions of current law to take effect under conditions farmers are now facing. Our cotton farmers cannot spend more to make a crop in 1961 than in 1960 and take $12 to $15 less a bale for it. Not only they, but the entire economy of the cotton area and of the Nation will suffer from such an unrealistic program for this great agricultural commodity.

This bill, I have introduced today, is in the nature of emergency legislation. It will provide a floor of 75 percent of parity for the 1961 crop and will postpone until 1962 the change in the price support base. Passage of this bill will protect our cotton farmers from ruinous prices for the 1961 crop and permit needed program changes to be made after thorough study during the next session.

I invite the careful study and support of this bill by my colleagues. Surely, we need this much protective legislation for our next year's cotton crop, and I fervently hope that we can enact this bill into law before adjournment.

BIOLOGICAL AND CHEMICAL WEAPONS

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent to address the House for 1 minute, to revise and extend my remarks, and to include extraneous matter.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. KASTENMEIER. Mr. Speaker, I rise today to report to the Congress a disturbing chronology of events. Last

September 3, I introduced in the House a resolution, House Concurrent Resolution 433, which would reaffirm American policy never to use biological and chemical weapons unless they are first used against us.

That resolution was referred to the House Foreign Affairs Committee. On September 7 the committee requested the opinion of the State Department on the resolution. On September 15 the State Department acknowledged the receipt of the request. From that day to this, the committee has not heard further from the State Department concerning my resolution against first use of chemical and biological weapons.

Perhaps this delay of 7 months might not be considered terribly unusual, but there is one special factor in this case: On January 13 the President himself stated that his own instinct would be against starting such a thing as biological or chemical attack first. The precise wording of the press-conference question and answer follow:

PRESIDENTIAL PRESS CONFERENCE, JANUARY 13, 1960

Ronald W. May, Capital Times, Madison, Wis.: "Mr. President, Representative KASTENMEIER, of Wisconsin, has suggested that there might be a change in our traditional policy of not using chemical, germ, or poison gas warfare first. He said that Army people have tried to—indicated that they believe that maybe we should change our policy and use these first either in a large or even in a small war. Is this true?"

Answer: "I will say this: No such official suggestion has been made to me and so far as my own instinct is concerned is to not start such a thing as that first."

It might be presumed that once the President had spoken, the State Department could arrive rather quickly at a formal opinion on the no-first-use resolution. Yet no such opinion has been received. Naturally, questions immediately arise as to the reasons for this failure to report.

Is it possible that there are differences between the State Department and other departments on whether the United States should use gas and germ weapons before an enemy uses them? Are there perhaps even disagreements within particular departments on this issue? I do not know. I do not know what effect such differences of opinion would have or ought properly to have, once the President has expressed his opinion.

But I do know that this enormous delay in presenting a report to the Foreign Affairs Committee of this House is delaying the consideration by the committee and by Congress of this crucial moral and philosophical question, involving the world image of the United States. The weapons that are involved are more and more being discussed as the next dread possibilities in the worldwide arsenals of mass annihilation. Therefore, Mr. Speaker, it behooves the Congress and the American people to begin serious discussions of how to deal with this deadly possibility, and the executive departments should be willing to aid such discussions by providing prompt reports. I call upon the President to direct that a report now be filed, in order to give effect to his January 13 statement.

FOREIGN IMPORT DUTY ON TOBACCO

Mr. BONNER. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. BONNER. Mr. Speaker, my statement is in behalf of the tobacco grower and exporter.

The Journal of Commerce of April 4 contained the encouraging news that there is hope for a cut in the 30-percent ad valorem tariff imposed on American tobacco by the European Common Market.

This is encouraging because it will assure a continuing market for one of our major agricultural products upon which the economy of a considerable part of the country depends. As time goes on we are faced with increasing dangers of restriction of our markets through development of other agricultural areas and tariff and other restrictions placed upon our agricultural products for selfish reasons by various nations of the world.

Local pressures in the Philippines and elsewhere in the world have drastically reduced our exports to the lasting detriment of our agriculture. There is every reason to believe that the State Department has been less than vigilant in safeguarding our interest in this area. A classic example is the fact that Philippine sugar is admitted to the United States under preferential tariff, while our tobacco faces increasingly stringent restrictions over the past years in that area. It is hoped that the State Department will exhibit a keener consciousness of the problems of American agriculture in its dealings with foreign governments. Its opportunity to protect the interest of the United States in this field will come in the course of tariff negotiations with the Common Market. It is devoutly to be hoped that we will not come out second best, as has happened all too frequently in the past.

Another aspect of this problem that severely affects the interests of our tobacco producers is freight rates. Over the years the United States has expended vast sums for the maintenance and development of an American merchant marine, not only for our defense, but also in the interests of our commerce.

In recent months we have had the sad spectacle of the very companies that have been thus aided manipulating freight rates on tobacco to the detriment of our producers. Within recent months within one conference the rate has fluctuated over 50 percent, as a result of which our customers have been upset and have been faced with the possibility of severe financial losses. This, I submit, is no way to build up the sale of our agricultural products, which is so necessary to the welfare of our country.

It is to be hoped that the steamship carriers will recognize their obligation to the United States by doing their part to encourage the export of agricultural products. This does not necessarily mean reduction of freight rates, but it definitely means stability. Production and disposal of agricultural commodities is fraught with enough difficulties without the addition of the necessity of gambling on freight rates.

The situation in which the tobacco exporters have found themselves affects me very greatly, and I feel a serious concern for that great industry. Coming, as I do, from a predominantly agricultural area, where the growing and processing of tobacco is the backbone of our economic well-being, I wanted to call to the attention of this body the facts which I have set before you today, in the hope that serious consideration and deliberation will be given to an effort to try to alleviate these conditions.

DEFENSE OF AMERICA

Mr. CURTIS of Missouri. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD and include extraneous matter.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. CURTIS of Missouri. Mr. Speaker, STUART SYMINGTON, one of the announced candidates for the Democratic nomination for President has made a recent explanation that he resigned as Secretary of the Air Force in 1950 just before the Korean war broke out in protest over President Truman and Secretary of Defense Louis Johnson programing a 48-group Air Force instead of the 70-group Air Force the 80th Congress provided the financing for.

I am placing in the RECORD an article from the New York Times of April 25, 1950, which reports this retirement and a simultaneous promotion of Mr. SYMINGTON to Chairman of the National Securities Resources Board, the czar of mobilization as some of the press referred to this new job at the time.

The New York Times quotes Mr. SYMINGTON as follows:

Although convinced that a 70-group Air Force was necessary, Mr. SYMINGTON added, he was convinced of the importance of economy "since the Nation can be defeated by economic disaster as well as military disaster," and therefore he supported President Truman's 48-group program "without any reservation whatever."

Perhaps Congressman MOULDER who announced the candidacy of Mr. SYMINGTON for President on the floor of the House the week before last would enlighten us on this matter. As it stands, Mr. SYMINGTON'S resignation in protest is like something out of "Alice Through the Looking Glass."

The article follows:

SYMINGTON, ON RETIRING, FINDS AIR FORCE FIGHTING VALUE CUT

(By Charles E. Egan)

WASHINGTON, April 24.—A flight of 48 jet fighters, the largest formation of such planes ever to fly over Washington, paid an aerial salute today to W. STUART SYMINGTON, retiring Secretary of the Air Force. The display was part of the formal ceremonies with which the Air Force said goodby to the first man to head the unit under President Truman's armed services unification program.

Before he stepped from the Pentagon building to be greeted by a 19-gun salute, a

guard of honor, the Air Force band and the aerial salute, Secretary SYMINGTON had taken part in the swearing-in ceremonies of his successor, Thomas K. Finletter. He had also presided at a farewell news conference where he again voiced his belief that the Nation required a 70-group Air Force as a minimum insurance for its security.

Mr. SYMINGTON leaves the Air Force post he has held since September 1947, to become chairman of the National Security Resources Board. He assumes his new responsibilities on Wednesday.

At his news conference, Mr. SYMINGTON said the combat effectiveness of the Air Force had declined in the last 6 months because of a reduction in numbers but its efficiency had increased.

"There is a tendency to mix up those two words—effectiveness and efficiency—and some misunderstanding has resulted," he added.

Although convinced that a 70-group Air Force was necessary, Mr. SYMINGTON added, he was convinced of the importance of economy "since the Nation can be defeated by economic disaster as well as military disaster," and therefore he supported President Truman's 48-group program "without any reservations whatever."

He added, however, that he did not see how a balanced budget could be achieved with world conditions in the state they were now. Until differences between Russia and the United States were ironed out, he added, expenditures for arms and for other security purposes must continue on a heavy scale.

Allocation of manpower in the event of emergency, the retiring Secretary said, was probably the No. 1 problem now faced by the National Security Resources Board. He added he understood that that subject was now being taken up by the Board and would be pressed to an early conclusion.

He said also that civil defense planning would be pressing, but added that standby mobilization legislation was in good shape and might be submitted to Congress soon.

TWO HUNDRED SEE FINLETTER TAKE OATH

More than 200 well-wishers, ranging from Secretary of State Dean Acheson, Secretary of Defense Louis Johnson, who administered the oath, and high-ranking officials of the Armed Forces, Joint Chiefs of Staff and others were on hand to see Mr. Finletter take the oath as Mr. SYMINGTON'S successor. Air Force generals and personnel expressed satisfaction over the fact that such a strong supporter of a 70-group Air Force as Mr. Finletter had been chosen for the post vacated by Mr. SYMINGTON.

Mr. Finletter, a New York lawyer, headed the President's Air Policy Commission in 1947–48, and it was that Commission that fixed upon the 70-group goal as the ultimate minimum requirement for U.S. domination of the air. At the time his nomination to be Secretary of the Air Force was announced, Washington reports had it that Mr. Finletter had come to an agreement with the President to support the 48-group program, but the Air Force feels it has a strong advocate for increased strength in the person of the new Secretary.

Secretary Johnson praised Mr. Finletter for his many services to the Nation, before administering the oath of office. Later, Secretary Johnson, the new Air Force Secretary, and Mr. SYMINGTON held a reception in Mr. Johnson's office for Air Force officials and the many civilian visitors who had come to witness the swearing-in of Mr. Finletter.

The day of ceremonies at the Pentagon was marked also by the retirement of Arthur S. Barrows, Under Secretary of the Air Force. Mr. Barrows received the Air Force Exceptional Service Award from Mr. SYMINGTON in the morning, and the well-wishes of Secretary Johnson and other officials when he made his formal departure from his office this afternoon.

No successor has been named for Mr. Barrows' post yet by President Truman.

DOMESTIC TRUNK AIRLINES

The SPEAKER. Under previous order of the House, the gentleman from Illinois [Mr. MACK] is recognized for 15 minutes.

Mr. MACK. Mr. Speaker, in May of 1958, I introduced a bill to prohibit payment of subsidy to domestic trunk airlines. Due to the pressure of other activities, and because there appeared to be hope that no trunklines would apply for subsidy, I did not reintroduce the bill in 1959. But I feel that its reintroduction is necessary at this time.

At the time of introducing the earlier bill, I pointed out that Congress, when it included the subsidy provision in the Civil Aeronautics Act of 1938, intended to help the domestic trunklines obtain a firm start, but did not intend that the taxpayers of the United States serve as a continuous financial crutch to the airlines. We all know that most of the carriers have prospered richly. The Federal Government has spent nearly $200 million in subsidizing the trunklines since 1938. There are very few industries which have received such lavish assistance, and certainly after 22 years a continuation of subsidy can no longer be justified on the theory of helping these companies to get started. They are no longer infants, nor are they even small. They are large, mature corporations with very large revenues. They were expected to stand on their own feet long before this, they should do so, and the legislation which I am reintroducing is intended to insure that they shall.

In 1958, I also summarized some of the principal arguments for this legislation. I pointed out that very few other regulated industries are eligible for such subsidies. Obvious examples are the railroads and the power and light companies.

I said the legislation would mean that route awards would henceforth have to be based on more careful analysis of economic factors, and that this would reduce regional and local pressures for service which could not be justified by any true test of public necessity.

And finally, I said that it would save the taxpayer from the needless burden of subsidizing competition, which can result only from more carriers on a route than the traffic requires.

Nonetheless the question of subsidy for trunklines has arisen again, and calls for hardheaded facing of the facts of airline economics. The facts are that you cannot avoid risking a return to subsidy until you have a sound route structure, but you will not achieve such a route structure so long as subsidy is available because subsidy eliminates any economic penalty for operation of unnecessary routes. For the carrier, it is simply a case of applying for a route, knowing that if it is a moneymaker the carrier is well off and that, if it is not, the Government will bail the carrier out. The only sure loser is the U.S. taxpayer.

Is there anything in the past record which can possibly justify continuation of trunkline subsidy?

The Civil Aeronautics Act of 1938 was passed at the constant urging and behest of the carriers themselves. They were the ones that thought of it and lobbied for it from 1936 to 1938. In so doing, their trade association told the Congress that it expected little or no payments to be made under the subsidy provision of the act.

What happened? The very first year after enactment of the law the trunklines received in the neighborhood of $10 million in subsidy, and higher amounts immediately thereafter. Thus the carriers immediately began getting from the taxpayer a great deal more than they had told the Congress was to be expected.

As to the subsequent history, the trunklines have received nearly $200 million in subsidies. The high water mark for any one year was about $27 million just after World War II. By contrast, the subsidies for the local service carriers, which, of course, operate on an infinitely smaller scale, are already running at a level of $60 million per year. The difference in the size of the operation appears from the fact that I believe no local service carrier has operating revenues above about $10 million or $11 million per year, whereas the smallest of the trunklines has revenues some four times larger than that. Revenues of the larger trunks run to several hundred million dollars per year. If the local carriers, on their small scale of operations, require subsidies of $60 million, and the trunklines required over $25 million nearly 15 years ago when they were much smaller than they are today, it is perfectly obvious that the magnitude of trunkline operations today is such that a general return to subsidy could easily exceed $100 million per year for the trunklines alone.

This may sound unthinkable, but it was only about 4 years ago that the Board was pointing with pride to the fact that local carrier subsidies were then only $25 million.

Thus I submit that the past record and every logical evaluation of future possibilities tells us that we absolutely have to call a halt to trunkline subsidies.

Now then, what causes subsidy? It is either a route structure that makes no economic sense, or it is bad management. You cannot attribute it to accidents or weather or other transitory features. Weather affects everybody and it does not last very long. And, despite accidents, the industry's business has been growing by leaps and bounds year after year. Every knowledgeable person knows that the affect of accidents on traffic is a matter of a few days or weeks at most. Furthermore, you cannot use such transitory factors to explain losses in 4 successive years when other carriers were showing profits.

It is obvious, of course, that subsidy cannot be paid to bail out bad management. The law says that now. But neither can we go on using it to bail out the results of bad route grants made pursu-

ant to now discredited theories of strengthening a carrier.

Mr. Speaker, I hope that we will be able to give attention to this legislation. In the meantime, I hope it will be the sense of this House that there absolutely must be not one more penny of trunkline subsidy. I hope that the Civil Aeronautics Board will make this clear. I hope that it will acknowledge that the Department of Commerce has practically said as much in its recent recommendation against any subsidy once a carrier has been off subsidy for 5 years. I hope that the Board will face up to such mergers and route adjustments as may be necessary in order to carry out this policy. I believe the Congress is tired of excuses for costly and unnecessary operations, and determined to see that the hard but realistic decisions are made. This is not a case of taking advantage of companies which have come upon difficult times. It is quite the reverse, for it is the companies which would continue to take advantage of the U.S. taxpayer, irrespective of the true transportation requirements of the Nation. This we should not permit, for we do not need subsidy to operate the best competitive trunkline system in the world.

EXTENSION OF REMARKS

By unanimous consent, permission to extend remarks in the CONGRESSIONAL RECORD, or to revise and extend remarks, was granted to:

Mr. LINDSAY.

Mr. ALGER.

(At the request of Mr. ALBERT, and to include extraneous matter, the following:)

Mr. INOUYE.

Mr. PATMAN.

BILLS AND JOINT RESOLUTION PRESENTED TO THE PRESIDENT

Mr. BURLESON, from the Committee on House Administration, reported that that committee did on April 4, 1960, present to the President, for his approval, bills and a joint resolution of the House of the following titles:

H.R. 4874. An act to amend section 334 of the Agricultural Adjustment Act of 1938, as amended, to provide that for certain purposes of this section, farms on which the farm marketing excess of wheat is adjusted to zero because of underproduction shall be regarded as farms on which the entire amount of the farm marketing excess of wheat has been delivered to the Secretary or stored to avoid or postpone the payment of the penalty;

H.R. 6329. An act to convey certain land in McKinley County, N. Mex., to the Navajo Tribe of Indians;

H.R. 8251. An act for the relief of Tatsumi Ajisaka and others;

H.R. 8343. An act relating to the preservation of acreage allotments on land from which the owner is displaced by reason of the acquisition thereof by a Government agency in the exercise of the right of eminent domain;

H.R. 9444. An act for the relief of Hsiao-li Lindsay (nee Li-Hsiao-li);

H.R. 10233. An act making appropriations for the Government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending June 30, 1961, and for other purposes; and

H.J. Res. 283. Resolution to authorize participation by the United States in parliamentary conferences with Mexico.

ADJOURNMENT

Mr. ALBERT. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 19 minutes p.m.) the House adjourned until tomorrow, Wednesday, April 6, 1960, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2028. A letter from the Deputy Secretary of Defense, transmitting the semiannual report of the Department of Defense for the period July 1 through December 31, 1959, relating to the payment of claims arising from the correction of military or naval records, pursuant to Public Law 220, 82d Congress; to the Committee on Armed Services.

2029. A letter from the clerk, U.S. Court of Claims, relative to the claim of *Bernard J. Hoffman, doing business under the trade name of Pyro Guard Service Company* v. *The United States* (Congressional No. 9–58), pursuant to sections 1491 and 1492, title 28, United States Code, and H.R. 6390, 85th Congress; to the Committee on the Judiciary.

2030. A letter from the Commissioner, Immigration and Naturalization Service, U.S. Department of Justice, transmitting copies of orders suspending deportation for certain persons, pursuant to section 244(a)(5) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1254(a)(5)); to the Committee on the Judiciary.

2031. A letter from the Commissioner, Immigration and Naturalization Service, U.S. Department of Justice, transmitting a copy of the order granting the application for permanent residence filed by Chong Yue Wah also known as Chong Wak Yue, A10491451, pursuant to section 6 of the Refugee Relief Act of 1953; to the Committee on the Judiciary.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. THOMAS: Committee of conference. H.R. 10743. A bill making supplemental appropriations for the fiscal year ending June 30, 1960, and for other purposes (Rept. No. 1452). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ADDONIZIO:

H.R. 11563. A bill to amend section 701 of the Housing Act of 1954 (relating to urban planning grants), and title II of the Housing Amendments of 1955 (relating to public facility loans), to assist State and local governments and their public instrumentalities in improving mass transportation services in metropolitan areas; to the Committee on Banking and Currency.

By Mr. BURDICK:

H.R. 11564. A bill to promote the utilization of Indian-owned resources by Indians of the three affiliated tribes of the Fort Berthold Reservation; to the Committee on Interior and Insular Affairs.

By Mr. CEDERBERG:

H.R. 11565. A bill to readjust postal rates, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. CELLER:

H.R. 11566. A bill to amend section 457 of title 28 of the United States Code to protect the right of the public to information; to the Committee on the Judiciary.

H.R. 11567. A bill to clarify the status of circuit and district judges retired from regular active service; to the Committee on the Judiciary.

By Mr. DENT:

H.R. 11568. A bill to amend the Library Services Act in order to extend for 5 years the authorization for appropriations, and for other purposes; to the Committee on Education and Labor.

By Mr. FRELINGHUYSEN:

H.R. 11569. A bill to amend the Library Services Act in order to extend for 5 years the authorization for appropriations, and for other purposes; to the Committee on Education and Labor.

By Mr. HALPERN:

H.R. 11570. A bill to amend the Immigration and Nationality Act; to the Committee on the Judiciary.

H.R. 11571. A bill to supplement and revise the criminal laws prescribing restrictions against conflicts of interest applicable to employees of the executive branch of the Government of the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. HEMPHILL:

H.R. 11572. A bill to amend section 17 of the War Claims Act of 1948; to the Committee on Interstate and Foreign Commerce.

By Mr. IKARD:

H.R. 11573. A bill to provide for the duty-free importation of scientific equipment for educational or research purposes; to the Committee on Ways and Means.

By Mr. JONES of Alabama:

H.R. 11574. A bill to stabilize cotton price support for the 1961 crop; to the Committee on Agriculture.

H.R. 11575. A bill to amend the Library Services Act in order to extend for 5 years the authorization for appropriations, and for other purposes; to the Committee on Education and Labor.

By Mr. KILDAY:

H.R. 11576. A bill relating to the employment of retired commissioned officers by contractors of the Department of Defense and the Armed Forces and for other purposes; to the Committee on Armed Services.

By Mr. MACHROWICZ:

H.R. 11577. A bill to adjust the rates of basic compensation of certain officers and employees of the Federal Government, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. PUCINSKI:

H.R. 11578. A bill to amend the Library Services Act in order to extend for 5 years the authorization for appropriations, and for other purposes; to the Committee on Education and Labor.

By Mr. SMITH of Mississippi:

H.R. 11579. A bill to amend the Federal Property and Administrative Service Act of 1949 so as to permit donations of surplus property to certain educational institutions; to the Committee on Government Operations.

By Mr. WALTER:

H.R. 11580. A bill to amend the Subversive Activities Control Act of 1950 so as to provide that no individual who willfully fails or refuses to answer, or falsely answers, certain questions relating to Communist activities, when summoned to appear before

certain Federal agencies, shall be employed on any merchant vessel of the United States or within certain waterfront facilities in the United States; to the Committee on Un-American Activities.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

By the SPEAKER: Memorial of the Legislature of the State of California, memorializing the President and the Congress of the United States to retain and expand the 6-percent differential allowed for bids of west coast shipyards for the construction of ships by supporting H.R. 9899; to the Committee on Merchant Marine and Fisheries.

Also, memorial of the Legislature of the State of New York, memorializing the President and the Congress of the United States to initiate a program for radioactive fallout protection for all citizens of the United States; to the Committee on Armed Services.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. AVERY:

H.R. 11581. A bill for the relief of Mah Ngim Hay (Joe Mah); to the Committee on the Judiciary.

H.R. 11582. A bill for the relief of Mah Ngim Bell (Bill Mah); to the Committee on the Judiciary.

By Mr. GARMATZ:

H.R. 11583. A bill for the relief of Mrs. Seto Yiu Kwei; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

406. By Mr. STRATTON: Resolution of the Town Board of the Town of Rotterdam, Schenectady County, N.Y., urging the passage and enactment of Senate bill 105, the Veterans' Children Scholarship Act; to the Committee on Interstate and Foreign Commerce.

407. Also, resolution of the Schenectady County Board of Supervisors, urging the passage and enactment of Senate bill 105, the Veterans' Children Scholarship Act; to the Committee on Interstate and Foreign Commerce.

408. Also, resolution of the Schenectady City Council urging the passage of Senate bill 105, the Veterans' Children Scholarship Act; to the Committee on Interstate and Foreign Commerce.

409. Also, resolution of the Board of Education of the City School District of the City of Schenectady, N.Y., urging the enactment into law of Senate bill 105 for the granting of scholarships to children of veterans under certain circumstances; to the Committee on Interstate and Foreign Commerce.

EXTENSIONS OF REMARKS

Pacific Northwest-Hawaii Renewal Case

EXTENSION OF REMARKS
OF
HON. DANIEL K. INOUYE
OF HAWAII
IN THE HOUSE OF REPRESENTATIVES
Tuesday, April 5, 1960

Mr. INOUYE. Mr. Speaker, it was my pleasure recently to associate myself with the Governor of Hawaii and the two Senators of the 50th State in protesting the report of a Civil Aeronautics Board examiner which would have drastically curtailed air service between the mainland and Honolulu.

A grateful Hawaii now commends the CAB for its infinite wisdom in voting, unanimously, to continue to have the excellent services of both Pan American World Airways and Northwest Orient Airlines on the route from Seattle and Portland to Honolulu.

Rather than comment on the obvious inequities of the examiner's report I prefer to express myself on the final findings of the CAB. Certainly nothing has excited the imaginative traveler as much as the new accessibility to Hawaii and the Pacific generally. Air service to Samoa, to Tahiti, to the Fiji Islands, and on to the great and beautiful countries of Australia and New Zealand has whetted the appetites of mainland travelers. Fortunately for us in Hawaii, virtually all of these people will be processed through Hawaii. Once there, we believe they will either remain or will immediately make plans to return.

Now that both Pan Am and Northwest will be operating on permanent certificates the travel potentials between Honolulu and the mainland are limitless. Now, from Los Angeles, San Francisco, Portland, and Seattle there exists the best possible air schedules. I am told that there are on drawing boards supersonic aircraft which will be able to operate from the east coast of the United States to Hawaii in 3 hours.

Mr. Speaker, there is often a tendency to criticize the CAB—and other quasi-judicial bodies, I might add—for ultimate decisions which are unpleasant to at least a few of the interested parties. In the current instance, however, there seems to be unanimous feeling that the Board acted with economic and judicial forthrightness.

As far as Hawaii is concerned, Mr. Speaker, we are delighted to learn that the great Pacific Northwest will be only as far from Hawaii as the Pan Am jets of the present and the Northwest jets of the future make us.

Tribute to the National Herald, a Greek-American Newspaper

EXTENSION OF REMARKS
OF
HON. JOHN V. LINDSAY
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Tuesday, April 5, 1960

Mr. LINDSAY. Mr. Speaker, in the helter-skelter of our daily living we more often than not overlook those who silently help foster unity and understanding among our populace.

One of our "silent" partners in this great endeavor is the National Herald, a Greek-American newspaper in my district, which is celebrating this year its 45th anniversary of publication.

A fitting tribute to the National Herald's management and staff for splendid public service is the message by the President of the United States which I include in the RECORD, as follows:

THE WHITE HOUSE,
Washington, D.C., March 30, 1960.

Mr. B. J. MARKETOS,
Publisher, the National Herald,
New York, N.Y.:

Through Congressman JOHN V. LINDSAY, I have learned of the 45th anniversary of the National Herald, and it is a pleasure to join in the observance of this event.

Over the years, the National Herald has contributed much to the life of our Greek-American community. In the tradition of democracy, printing the truth with freedom and responsibility, this newspaper has performed a splendid service for its readers.

Congratulations and best wishes.

DWIGHT D. EISENHOWER.

The Case of the Disappearing Money, or Why Financial Writers Rise With the Government Bond Market or Vice Versa

EXTENSION OF REMARKS
OF
HON. WRIGHT PATMAN
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Tuesday, April 5, 1960

Mr. PATMAN. Mr. Speaker, during recent weeks the Government bond market has been rising rather nicely. Interest rates have not been brought down to any major extent, but they have been eased somewhat.

Only a month ago the administration and the Federal Reserve were still waging an allout campaign to have Congress remove the traditional 4¼ percent interest rate ceiling on Government bonds. At that time both the Treasury and the Federal Reserve were taking the position that if the Treasury attempted to sell any new bonds, it would push the yields on bonds already outstanding above 4¼ percent, and the bonds could not be sold.

The Treasury has, as we know, had a change of heart and is now offering up to $1.5 billion of a new 4¼ percent bond to mature in 25 years. This offer has not driven bond prices down as we were told that it would. On the contrary, the outstanding bonds most nearly comparable to the new issue rose by eight thirty-seconds of a dollar yesterday. This is the Treasury 3¼s of 1985, which, according to the Wall Street Journal this morning, were being bid yesterday at 86$^{24}/_{32}$, which would yield the buyer 4.11 percent. In

other words, market yields on the 25-year bond yesterday were considerably lower than the 4.25 percent at which the new bond is being offered.

Why are Government bond prices now rising? The explanation we hear on all sides is that it is because the stock market is declining, and investors are putting their money into bonds rather than into stocks.

For example, a feature story carried by the Wall Street Journal yesterday puts it this way:

> The bond market has been winning investors away from the stock market. Stock prices surged to record highs at the end of 1959, buoyed by widespread forecasts of sharp gains in corporate sales and earnings in 1960. Since then, however, doubts have grown that this will quite measure up to the forecasts. In this atmosphere of uncertainty, many investors have been marking time by putting funds into bonds and other fixed income securities, rather than stocks.
>
> The enthusiasm for stocks in 1959 pushed prices so high that dividend yields in many cases sank below the yields available on bonds of comparable quality—in some cases to 1 percent or below.

And so on. This happy little explanation is what I call the "Case of Disappearing Money." It is based on a premise that money invested in stock somehow disappears. Normally we might think that when Mary Smith buys stocks from John Brown, John Brown will then have the money to invest in bonds or to put in the bank, in which case it will either be invested in bonds or free some third party's money for investment in bonds. But the financial writers obviously have a different theory, their theory being that when people are putting more money into the stock market, and thus driving stock prices up, that money somehow evaporates.

My point is the public is treated to all kinds of nonsensical explanations about money and financial markets. It seems to matter not to the explainers that their explanations today contradict the explanation of yesterday.

The "Case of the Disappearing Money" is exactly comparable with Chairman Martin's recent boast which suggests that the high interest rates of last year brought about and stimulated a record increase in savings. This suggestion, which is now being reported as fact by some of the financial writers, rests merely on the fact that combined purchases last year of interest-bearing and dividend paper by individuals and nonbanking companies reached an alltime high.

Chairman Martin's original statement on this matter—the one which made the headlines—was given before the Joint Economic Committee early in February. The extraordinary bit of news which he gave at that time was stated as follows:

> The activity last year of the nonbank public—meaning for the most part consumers and business concerns—in supplying borrowers with funds through the process of investment was truly extraordinary, and it did not stop with the purchase of Government securities sold by the banking system. The upswing in this activity shows up strikingly in the flow-of-funds data that I mentioned earlier. There, it appears that consumer and business investors increased the net amount of their purchases made directly in securities markets from about $4 billion in 1958 to almost $20 billion in 1959—a jump of 400 percent in a single year.
>
> The efficient and economically healthy flow of funds from savers to borrowers, directly and through intermediaries, did not come about without a price. The price was, of course, a rise in interest rates. These rates, representing a penalty to those who use someone else's money and a reward to those who save and risk their funds in loans and investments, rose in some instances to the highest levels in three decades. What happened is readily apparent: the pressure of demand for funds arising from a combination of forces converged to bring about a competition to borrow that drove interest rates upward; the rise in interest rates, in turn, operated to induce the savings and investment necessary to supply borrowing demands.

This statement comes very close to saying categorically that the high interest rates of last year were caused by an unusually high demand for credit, and, further, that the high interest rates of last year brought about an unusually large volume of savings. We need not debate the question whether the statement actually says these things or only suggests them. We need point out only that on the basis of the available evidence, what the statement suggests is contrary to fact.

Yes, there was an unusually large purchase of securities by the nonbank public, but what does this mean? It simply means that after the Federal Reserve drove the yield on 91-day Treasury bills up to astronomical heights, many nonbank corporations withdrew their demand deposits from the banks and put the funds into these short-term bills. But this does not mean that business firms and individuals saved any more of their incomes than in previous years, nor that the same funds would have not been invested in Treasury bills if the funds had been left in the commercial banks.

When interest yields on short-term Treasury bills are low, as they normally are, the industrial and utility corporations do not bother to draw their working funds out of the bank to invest them in these bills. Rather, they leave their working funds in demand deposits in the commercial banks and the banks use these funds to invest in the short-term bills.

But when the rate on Treasury bills goes very high, the nonbank corporations find it worth their while to take funds out of demand deposits, where they draw no interest, and put these funds into these bills. They can buy bills which mature in 3 months, 1 month, 1 week, or in any number of days they choose. In other words, they can buy a bill which will mature and return their cash at the time the cash is needed in corporate operations.

But does the fact that the nonfinancial corporations reduced their demand deposits with the commercial banks and bought more Treasury bills, because of the high interest rates, mean that more money was saved and less spent? Or does it mean that the demand for credit was greater last year than in previous years? It does not.

The flow of funds data which Chairman Martin has referred to as his basis for suggesting these things do not support his suggestions. These data, which are available only for the first 9 months of 1959, indicate that national savings last year, both on a net basis and on a gross basis, was a smaller percentage of the national income than was true in the years 1955, 1956, and 1957. Similarly, these data indicate that the demand for investment funds was a lesser percentage of national income last year than in the previous years I have mentioned, plus probably many other earlier years.

In other words, the high level of interest rates which the Federal Reserve maintained throughout the whole of last year simply meant that this Nation paid a higher price for the same amount of savings that would have been made in any case.

Why have Government bond prices gone up and interest rates gone down? I suggest that neither the theories advanced by the financial writers nor by the Federal Reserve people explain it.

It is not because stock prices have come down, because when one person buys stock from another, the money does not disappear.

And it is not because the Federal Reserve has now decided to encourage the American people to spend more and save less, for the simple reason that the Federal Reserve has had no luck whatever in changing this Nation's savings habits by raising or lowering interest rates.

The main reason that bond prices have improved and interest rates have gone down is that the political weather has been improving. It has been becoming more and more evident that Congress will not repeal the 4¼ percent ceiling on Government bonds, and it is becoming more and more evident to the people who buy most of the Government bonds that the long-term outlook is for a policy of more moderate interest rates. Their expectations of higher interest rates have declined and, inevitably, interest rates themselves have declined.

Washington Report

EXTENSION OF REMARKS
OF
HON. BRUCE ALGER
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 5, 1960

Mr. ALGER. Mr. Speaker, under leave to extend my remarks in the RECORD, I include the following newsletter of April 2, 1960:

WASHINGTON REPORT
(By Congressman BRUCE ALGER, Fifth District, Texas)

Representative Russell Mack, of Washington, dropped dead while answering a quorum call on Monday, and the House adjourned in his memory. Truly, he died with his boots on. We shall miss him. Eleven Members of the 86th Congress have now passed on.

The Health, Education, and Welfare (HEW) appropriation bill passed 362 to 10. Actually, the $4.2 billion bill provided the money to finance two departments—Labor

($542 million) as well as HEW ($361.9 million). This amount exceeded the budget by $184 million, and last year's expenditures by $128 million. I opposed the bill for a number of reasons. (1) $183 million over the $4 billion budget figure which was more than enough. (2) Various programs financed by this bill are subject to criticism, including water pollution, school construction and school payments in lieu of taxes in "impacted areas." I cannot understand the reluctance of many in Congress to say no to any spending for projects which sound good. Take medical research, for example. Of course, we are all for medical research of all kinds, as we are all interested in the welfare, health, and education of our people. It does not follow that recognition of such needs means in every case more Federal law, spending, and control.

Many Members want to protest but wonder how you go about opposing a $4 billion "package", larded with boondoggle, when it also contains worthwhile projects and others that sound equally good—all for the general welfare of the people. How? Simply by voting against it. A vote "against" need not mean a Member is against trying to solve that need—rather that (1) it is not a matter of proper Federal concern, or (2) there is already enough money in the program without adding more, or (3) we can delay here and there until we can afford further spending.

For my part, I intend to remember my pledge of preserving fiscal responsibility by (1) balancing the budget, (2) reducing the debt, and (3) revising and reducing taxes. This course also assures keeping the dollar worth a dollar. True, it may not always be as appealing politically as the proffer of Federal money to constituents. In this cold war year, I suspect most Dallas folks would question, as I did, the urgency, if not the need, for Federal expenditures just now to finance studies on (1) the circulatory physiology of the octopus, (2) biological effects of parental age of mealworm beetles, (3) aging and ovaries of cockroaches, and (4) causes af alcoholism.

The White House Conference on Children and Youth brought to Washington a number of representatives from Dallas, as it did from all over the Nation, to discuss various problems affecting the Nation's youth. Capital newspapers reporting the event abound with suggestions for parents, educators and all levels of government. Federal aid to education, desegregation, birth control, and juvenile delinquency were in the forefront of attention. I couldn't help but wonder at some of the speeches I read—assuming they were reported accurately. It seems to me that in trying to solve some of these problems, action by the Federal Government should be a last resort because Federal action always imperils local initiative. Could it be that some of our trouble stems from too heavy a reliance on Government already—that we have tried inappropriately and foolishly to solve all our problems by transferring parental and community responsibility to the Washington bureaucracy? It is well to study our problems in a conference like this. It is my hope, though, that we do not end up expecting more Federal aid and direction to solve them. I wonder, too, if the Conference will recognize the spiritual base on which our society and government rests. Will the Conference even mention America's greatest strength throughout our history, our spiritual beliefs and the individual responsibility that, by definition, accompanies them? Surely nothing could be more ludicrous than for a people who have all but banished any word of God from our public schools to turn, then, to seek wisdom and guidance from the Federal bureaucracy.

This week's TV feature (WFAA, Sunday, 10:30 a.m.) was Dr. Keith Glennan, head of NASA (National Aeronautics and Space Administration) who discussed our space programs. The United States is making rapid strides in all areas, and concedes only a temporary lead to Russia in but one field, that of "launch vehicles."

Correction of last week's newsletter—Senator BARRY GOLDWATER's speech on foreign affairs was made in Washington, not Dallas where he spoke on labor management before the Public Affairs Luncheon Club.

SENATE

WEDNESDAY, APRIL 6, 1960

(Legislative day of Tuesday, April 5, 1960)

The Senate met at 10 o'clock a.m., on the expiration of the recess, and was called to order by the President pro tempore.

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

Our Father, God, in spite of all the clouds of doubt and falsehood which so often hide the sun, we know, as we turn to Thee, that the blue sky is the truth. We thank Thee for the dreams of our highest and best hours—visions of wildernesses now parched, which shall yet blossom as the rose.

We come seeking once more the faith that makes our dreams come true. Grant us the endurance of those who, in past dark and despairing days, were called to find their way, as we must, by the flame of a courage and a trust that no darkness can put out.

In these sacred weeks, as a lone cross looms against the sky, may our spirits be inspired as we behold a cruel object of torture changed into the shining splendor of the most sublime triumph of the ages.

We ask it in the name of the Redeemer who despised the shame and endured the cross for the joy that was set before Him. Amen.

THE JOURNAL

On request of Mr. JOHNSON of Texas, and by unanimous consent, the reading of the Journal of the proceedings of Tuesday, April 5, 1960, was dispensed with.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Miller, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session,

The PRESIDENT pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 231) for the relief of Patricia Crouse Bredee.

The message also announced that the House had passed the following bills and joint resolution, in which it requested the concurrence of the Senate:

H.R. 1402. An act for the relief of Leandro Pastor, Jr., and Pedro Pastor;

H.R. 1463. An act for the relief of Johan Karel Christoph Schlichter;

H.R. 1486. An act for the relief of David Tao Chung Wang;

H.R. 1519. An act for the relief of the legal guardian of Edward Peter Callas, a minor;

H.R. 1542. An act for the relief of Biagio D'Agata;

H.R. 1543. An act for the relief of Angela D'Agata Nicolosi;

H.R 2007. An act for the relief of May Hourani;

H.R. 2645. An act for the relief of Jesus Cruz-Figueroa;

H.R. 3122. An act directing the Secretary of the Interior to issue a homestead patent to the heirs of Frank L. Wilhelm;

H.R. 3253. An act for the relief of Ida Magyar;

H.R. 3827. An act for the relief of Jan P. Wilczynski;

H.R. 4763. An act for the relief of Josette A. M. Stanton;

H.R. 4834. An act for the relief of Giuseppe Antonio Turchi;

H.R. 5033. An act for the relief of Betty Keenan;

H.R. 6121. An act for the relief of Placid J. Pecoraro, Gabrielle Pecoraro, and their minor child, Joseph Pecoraro;

H.R. 6400. An act for the relief of Mrs. Clara Young;

H.R. 8417. An act for the relief of Grand Lodge of North Dakota, Ancient Free and Accepted Masons;

H.R. 8457. An act for the relief of Richard Schoenfelder and Lidwina S. Wagner;

H.R. 8798. An act for the relief of Romeo Gasparini;

H.R. 8888. An act for the relief of Angela Maria;

H.R. 9142. An act to provide for payment for lands heretofore conveyed to the United States as a basis for lieu selections from the public domain, and for other purposes;

H.R. 9751. An act for the relief of Mrs. Icile Helen Hinman;

H.R. 10564. An act for the relief of 2d Lt. James F. Richie; and

H.J. Res. 638. Joint resolution relating to deportation of certain aliens.

HOUSE BILLS AND JOINT RESOLUTION REFERRED

The following bills and joint resolution were severally read twice by their titles and referred as indicated:

H.R. 1402. An act for the relief of Leandro Pastor, Jr., and Pedro Pastor;

H.R. 1463. An act for the relief of Johan Karel Christoph Schlichter;

H.R. 1486. An act for the relief of David Tao Chung Wang;

H.R. 1519. An act for the relief of the legal guardian of Edward Peter Callas, a minor;

H.R. 1542. An act for the relief of Biagio D'Agata;

H.R. 1543. An act for the relief of Angela D'Agata Nicolosi;

H.R. 2007. An act for the relief of May Hourani;